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USAO File # 2009V02059

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

-against-

EMANUIL UVAYDOV and
VYACHESLAV UVAYDOV,

Defendants.
-----X

Civil Action
No.

(09, J.) 4109
(09, M.J.)

COMPLAINT

VITALIANO, J.
GOLD, M.J.

The United States of America, by its attorney, BENTON J. CAMPBELL, United States Attorney for the Eastern District of New York, Timothy D. Lynch, Assistant United States Attorney, of counsel, for its complaint against Defendants Emanuil Uvaydov ("Emanuil") and Vyacheslav Uvaydov ("Vyacheslav") (collectively, "Defendants"), alleges:

Nature of the Action

1. This is a civil action for injunctive relief and damages for aggrieved parties pursuant to 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.* (hereinafter, the "Fair Housing Act" or "Act"). As explained more fully below, tests conducted by two fair housing advocacy and counseling organizations, Long Island Housing Services, Inc. ("LIHS") and the National Fair Housing Alliance ("NFHA") (collectively, the "Complainants"), show that, in violation of the Act, Defendants made statements indicating their preference to exclude African-Americans from being able to rent an apartment in a house they own in Fresh Meadows, New York.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 3612(o) of the Fair Housing Act and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because the alleged discriminatory conduct took place in the district. Further, the apartment at issue is located in a house that lies in this district.

THE PARTIES

4. Defendants, who are brothers, jointly own a house located at 71-04 171st Street, Fresh Meadows, New York. The house has a two-bedroom apartment which Defendants have used as a rental (the "Apartment").

5. NFHA is a national non-profit membership organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Washington, D. C. NFHA is a nationwide alliance of private, non-profit fair housing organizations, including member organizations in New York, whose mission is to eliminate housing discrimination and ensure equal opportunity in housing. As part of its fair housing enforcement efforts, NFHA conducts fair housing tests to determine whether entities covered by the Fair Housing Act are engaged in discrimination.

6. LIHS is a private, not-for-profit organization incorporated under the laws of New York. Its principal place of business is in Bohemia, New York. One of LIHS's specific purposes and goals is the promotion of equal opportunity in the rental of housing and the elimination of all forms of illegal housing discrimination. To this end, the activities in which LIHS engages include, but are not limited to: (1) investigating allegations of discrimination; (2) conducting

investigations of housing facilities to determine whether equal opportunity in housing is provided; (3) taking such steps as it deems necessary to assure such equal opportunity and to counteract and eliminate discriminatory housing practices; (4) providing outreach and education to the community, including housing providers and consumers, regarding fair housing; and (5) monitoring and training housing providers that have previously engaged in discriminatory housing practices.

STATUTORY BACKGROUND

7. Section 804(c) of the Fair Housing Act prohibits, in pertinent part, the making of statements “with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C. § 3604(c).

8. Under the Act, a dwelling is defined as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.” 42 U.S.C. § 3602(b).

PROCEDURAL HISTORY

9. In August 2008, the Complainants separately filed verified complaints with the United States Department of Housing and Urban Development (“HUD”) alleging that Defendant Vyacheslav had made statements with respect to the rental of a two-bedroom apartment that indicated a preference, limitation, or discrimination on the basis of race, color, and national origin. Defendant Emanuil was also named in the complaints because he co-owned the property at issue.

10. Pursuant to 42 U.S.C. §§ 3610(a) and 3610(b), the Secretary of HUD (“Secretary”) conducted an investigation of the Complainants’ complaint, attempted conciliation without success, and prepared a final investigative report.

11. Based on the information gathered in the course of the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that there was reasonable cause to believe that Defendants had violated the Fair Housing Act.

12. On or about August 6, 2009, the Secretary issued a charge of discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), which was amended on or about August 7, 2009, charging Defendants with engaging in discriminatory housing practices in violation of the Fair Housing Act.

13. On or about August 24, 2009, the Complainants elected to have their charge resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).

14. Pursuant to 42 U.S.C. § 3612(o)(1), the Secretary subsequently authorized the Attorney General to file this action on behalf of the Complainants. This action is timely filed.

FACTUAL BACKGROUND

A. The Initial Test by NFHA

15. In early August 2007, Defendant Vyacheslav advertised the Apartment for rent on Craigslist, an online classified advertising website.

16. On or about August 7, 2007, NFHA received a complaint from an individual who had responded to the Craigslist advertisement. The individual complained that discriminatory statements had been made in connection with the rental of the Apartment.

17. On August 8, 2007, a tester employed by NFHA (“NFHA Tester”) spoke with defendant Vyacheslav. After the NFHA Tester expressed interest in renting the Apartment with

two friends, Vyacheslav asked the NFHA Tester, among other things, whether she was “Indian”; the tester stated that her parents were Italian.

18. Defendant Vyacheslav then asked her about the national origin of her potential roommates. When the NFHA Tester informed Defendant Vyacheslav that one of the women was black, he said that this would be a “problem.”

19. Defendant Vyacheslav went on to explain that by “problem,” he meant that he lived in a white neighborhood and that there would be complaints if he rented to a black person. He further explained that he had received four to five calls that same day from “people of different colors,” and that he just could not rent to them.

B. The LIHS Tests

20. Following this initial test, LIHS sent four additional testers (Testers A, B C and D) between August 14, 2007, and August 17, 2007, to apply to rent the Apartment.

21. On or about August 14, 2007, Tester A, a white female, spoke by telephone to Defendant Vyacheslav several times about the availability of the Apartment.

22. During one of those conversations, Defendant Vyacheslav asked Tester A whether she was Greek; she responded that she was of Italian descent.

23. At approximately 5:22 P.M. the same afternoon, a few hours after Tester A first contacted Defendant Vyacheslav, Tester B, a Hispanic female with a heavy Spanish accent, telephoned Defendant Vyacheslav to inquire if the Apartment was still available for rent.

24. During the course of their telephonic conversation, Defendant Vyacheslav asked Tester B if she were Italian; she responded by indicating that she was Hispanic. As the conversation ended, Tester B made an appointment with Defendant Vyacheslav to view the Apartment at approximately 8 P.M. the following evening

25. On or about August 15, 2007, at approximately 5:12 p.m., Tester C, an African-American male, telephoned Defendant Vyacheslav and inquired about the availability of the Apartment.

26. Defendant Vyacheslav said that the Apartment was still available. He asked Tester C where he was from. Tester C replied that he was from Archer and 172nd Street in Jamaica, Queens, New York. Defendant Vyacheslav then asked Tester C where he was from “originally.”

27. When Tester C responded that he was from Queens, New York, Defendant Vyacheslav stated “[n]o, I’m saying I understand, I mean, uh, are you Italian?” Tester C replied that he was not Italian and stated that he was African-American.

28. On or about August 16, 2007, at approximately 11:19 a.m., Tester C again called Defendant Vyacheslav. Defendant Vyacheslav advised Tester C that the Apartment had been rented.

29. On or about August 16, 2007, at approximately 1:05 p.m., Tester A called telephoned Defendant Vyacheslav and asked if the Apartment was still available. Defendant Vyacheslav responded that it was still available, and that whoever came first would get it.

30. On or about August 16, 2007, at approximately 4:36 p.m., Tester D, a white female, telephoned Defendant Vyacheslav and inquired about the availability of the Apartment. Defendant Vyacheslav responded that it was available.

**First Claim for Relief:
(On Behalf of Complainants for Violation of 42 U.S.C. § 3604(c))**

31. Paragraphs 1 through 30 above are repeated and realleged as if set forth fully herein.

32. The Apartment Defendants sought to rent is a “dwelling” as that term is defined under Section 802(b) of the Act. 42 U.S.C. § 3602(b).

33. Pursuant to Section 804(c), Defendant Vyacheslav was prohibited from making, printing, or publishing, or causing to be made, printed, or published, “any statements with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, . . . or national origin, or an intention to make any such preference, limitation, or discrimination.” 42 U.S.C. § 3604(c).

34. The prohibition enumerated in Section 804(c) applies to Defendant Vyacheslav’s rental of the Apartment.

35. Defendant Vyacheslav violated Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c), by repeatedly making statements with respect to the rental of a dwelling indicating a preference, limitation, or discrimination on the basis of race, color, and national origin.

36. Defendant Vyacheslav’s discriminatory actions were intentional, willful, and taken in blatant disregard of the rights of the Complainants.

37. As co-owner of the Apartment, Defendant Emanuil is vicariously liable for his brother Vyacheslav’s discriminatory statements.

38. Complainants are aggrieved persons, as that term is defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), because they were forced to expend funds employing the above-mentioned testers and investigating the alleged discriminatory practices of Defendants. As a result of their investigation, including the use of testers, which revealed discriminatory conduct on the part of Defendants, Complainants have suffered damages.

39. Pursuant to 42 U.S.C. § 3612(o)(3), Complainants are entitled to collect monetary damages.

**Second Claim for Relief:
(Declaratory and Injunctive Relief)**

40. Paragraphs 1 through 39 above are repeated and realleged as if set forth fully herein.

41. As a result of Defendants' violation of Section 804(c) of the Fair Housing Act, the United States is entitled to declaratory judgment against Defendants, declaring that Defendants' discriminatory conduct, as set forth above, violates the Act, as amended, 42 U.S.C. § 3601, *et seq.*

42. Pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), Defendants' violation of the Act also entitles the United States to an order enjoining Defendants and their agents, employees, and successors, and all other persons in active concert with them, from making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, or national origin, or an intention to make such preference, limitation, or discrimination.

43. Defendants' violation of the Act further entitles the United States pursuant to §§ 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to an order directing Defendants to take appropriate affirmative action to insure that the activities complained of above are not engaged in again by them or any of their agents.

WHEREFORE, the United States of America respectfully requests that this Court:

1. Declare that the discriminatory housing practices of Defendants, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

2. Enjoin and restrain Defendants, their agents, employees, and successors, and all others in concert with them, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), from making,

printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, or national origin, or an intention to make such preference, limitation, or discrimination;

3. Issue an Order pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1) directing Defendants to take appropriate affirmative action to ensure that the activities complained of above are not engaged in again by them or any of their agents;

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

5. Grant the United States such other and further relief as is just and proper.

Dated: Brooklyn, New York
September 23, 2009

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By: 

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