

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-C-1160

VANDELAY GROUP, LLC,
VANDELAY OAKLAND, LLC,
SIGMA COMMERCIAL, LLC,
and JEFFREY KOENIG,

JURY TRIAL DEMANDED

Defendants.

COMPLAINT

The United States of America brings this action 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. This action is brought on behalf of Sydneye Olkowski and Olkowski’s partner, Eric Plumb, who suffered discrimination on account of Olkowski’s disability by Defendants Vandelay Group, LLC, Vandelay Oakland, LLC, Sigma Commercial, LLC and Jeffrey Koenig. 42 U.S.C. § 3612(o)(1). The United States seeks injunctive and declaratory relief, as well as monetary damages, the basis for which is alleged as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o)(1).
2. Venue is proper under 28 U.S.C. § 1391(b), because the events giving rise to the claims alleged herein occurred in the Eastern District of Wisconsin.

II. PARTIES AND SUBJECT PROPERTY

3. Sydneye Olkowski¹ has a disability within the meaning of 42 U.S.C. § 3602(h)². Olkowski has depression and anxiety disorders. Olkowski's disability limits their major life activities, including the ability to leave home and interact with others.

4. Olkowski has a disability-related need for a dog (at times referred to as a "service dog," "assistance dog" or "emotional support animal"). Olkowski's assistance dog ameliorates the effects of Olkowski's disability by alleviating mental distress and pain, calming Olkowski, improving Olkowski's mood, and motivating Olkowski to participate in activities of daily life.

5. Eric Plumb is Olkowski's partner and resided with Olkowski at all times material to this Complaint.

6. Defendant Jeffrey Koenig, individually and through his companies, owns and operates several residential rental properties in the Milwaukee area, including 2627 N. Oakland Avenue, Milwaukee, WI 53211 ("subject property"). The subject property is a "dwelling" as defined by 42 U.S.C. § 3602(b). The subject property is a duplex. Defendant Koenig does not live at the subject property and did not do so at any time during the events that give rise to this Complaint.

7. Defendant Sigma Commercial, LLC, which Defendant Koenig owned and controlled at all times relevant to this Complaint, is the parent company of Defendant Vandelay Group, LLC and Defendant Vandelay Oakland, LLC.

¹ Consistent with their preferences, the United States will use they/their pronouns when referring to Olkowski throughout this Complaint.

² The FHA uses the term "handicap," *see* 42 U.S.C. § 3602(h), but consistent with modern usage, the government uses the term "disability" in this Complaint.

8. Defendant Vandelay Group, LLC, which Defendant Koenig owned and controlled at all times relevant to this Complaint, is the management entity that leases and services the rental properties owned and controlled by Defendant Koenig and his companies.

9. Defendant Vandelay Oakland, LLC, which Defendant Koenig owned and controlled at all times relevant to this Complaint, owned the subject property.

III. FACTUAL ALLEGATIONS

10. Olkowski has received professional treatment for mental-health disabilities since at least the beginning of 2016.

11. Since July 2016, Olkowski has used an assistance dog, Kayla, to ameliorate the symptoms of those disabilities. Kayla is a shorthaired, mixed-breed dog which Olkowski adopted from a rescue organization.

12. In the fall of 2016, Olkowski's therapist, Amy Schwabe, MS, LPC, determined that Kayla ameliorated the effects of Olkowski's disability. Schwabe discussed with Olkowski Kayla's positive impact and prescribed Kayla as an emotional support animal to assist in ameliorating Olkowski's symptoms.

13. In April 2017, Olkowski and Plumb began searching for a new apartment in the neighborhood near the University of Wisconsin-Milwaukee.

14. On April 18, 2017, Olkowski and Plumb saw an advertisement on craigslist.org, listing the subject property. Plumb called the telephone number listed in the advertisement and spoke with Defendant Koenig to schedule a showing.

15. On April 19, 2017, Olkowski and Plumb met Defendant Koenig at the subject property. The tour of the subject property concluded with Olkowski and Plumb expressing

interest in renting the unit. Defendant Koenig directed them to fill out an online application to rent the unit.

16. Later that day, Olkowski and Plumb filled out an application online and paid a \$20 per person application fee.

17. Again, on that same day, April 19, 2017, Defendant Koenig e-mailed Olkowski and Plumb to tell them that that he had approved their application to rent the subject property. Defendant Koenig included a link to a lease agreement, which included the specific rental terms for the subject property, and told Olkowski and Plumb that they could sign the lease to rent the subject property.

18. Defendants' lease agreement contained both a "No Pets" provision and a "No Pets Allowed" provision. The "No Pets" provision provided: "NO PETS of any kind (including cats, dogs, fish and insects) are allowed in the Unit or on the Property at any time, unless required by federal or Wisconsin law in certain very limited circumstances." (emphasis in original). The "No Pets Allowed" provision provided: "There are no pets whatsoever allowed in the Unit or on the Property at any time." The lease agreement also provided that a violation of the "No Pets" and/or "No Pets Allowed" provision would subject Olkowski and Plumb to "a \$250 penalty for each offense," as well as other potential fees and termination of the lease.

19. The lease agreement failed to identify the "very limited circumstances" for which Defendants would make an exception to the "No Pets" provision and did not contain an explicit exception to the "No Pets" or "No Pets Allowed" provisions for service animals or assistance animals for individuals with a disability. The lease agreement also did not contain a reasonable accommodation policy or procedures related to seeking lease modifications due to disability-related needs.

20. Olkowski and Plumb decided to rent the subject property. At the encouragement of their parents, however, they decided to look at another unit before signing the lease.

Accordingly, later on April 19, 2017, Olkowski and Plumb sought to view another property that was advertised for rent on craigslist.com. This property was located on East Bradford Avenue and it, too, was owned and managed by Defendants.

21. When Olkowski and Plumb inquired about the East Bradford property, Defendant Koenig stated there was no need for Olkowski and Plumb to complete a new application or pay additional fees.

22. Olkowski and Plumb then scheduled an appointment to tour the East Bradford property the next day.

23. On April 20, 2017, Olkowski and Plumb toured the East Bradford property with Defendant Koenig.

24. During the showing, Olkowski and Plumb informed Defendant Koenig of Olkowski's disability, of the existence of Olkowski's emotional support animal, and of their need for an accommodation to any policy prohibiting animals in Defendants' properties.

25. Plumb offered to furnish documentation in support of the accommodation request.

26. During the showing on April 20, 2017, Defendant Koenig responded to the request for an accommodation by stating that Olkowski and Plumb would need to perform an allergy test on their assistance dog, Kayla, to determine if Kayla was hypoallergenic. Defendant Koenig stated that his doctor could conduct the allergy test and indicated the test would be expensive. Defendant Koenig further stated that unless the dog was hypoallergenic, the chances of passing the allergy testing were slim.

27. Defendant Koenig added that they should not sign the lease he had sent them until the allergy test on the dog had been completed successfully.

28. In an email dated April 27, 2017, Defendant Koenig rescinded his offer to have Olkowski's assistance animal tested by his doctor for allergens, claiming that his provider would not allow "comfort animals" in the hospital. Defendant Koenig further stated that no dogs are hypoallergenic in any event, suggesting that having the dog tested elsewhere would be fruitless.

29. In his April 27th email, Defendant Koenig did not propose any alternative accommodations. Indeed, Defendant Koenig did not engage with Olkowski and Plumb to discuss any accommodations (other than his retracted offer to have Kayla subjected to an allergy test) at any time during their discussions and emails concerning the subject property.

30. In his April 27th email, Defendant Koenig further stated that it was "not fair" for Olkowski and Plumb to seek an accommodation permitting Kayla's presence in the subject property. Defendant Koenig concluded that "there are plenty of options in this city that are set up exactly for your needs" and "wish[ed] them the best of luck" in finding another rental property. Defendant Koenig thus withdrew his prior offer to rent the subject property to Olkowski and Plumb.

31. Olkowski and Plumb thus were forced to look for alternative housing.

32. As a result of Defendants' discriminatory acts, Olkowski and Plumb have suffered harm including, but not limited to, loss of a housing opportunity, emotional distress, inconvenience, and monetary costs associated with securing alternative housing.

IV. OLKOWSKI'S COMPLAINT

33. On or about January 18, 2018, Olkowski filed a complaint of discrimination against Defendant Jeffrey Koenig and his companies, Vandelay Group, LLC and Sigma

Commercial, LLC, with HUD, pursuant to the Fair Housing Act. On February 27, 2020, the complaint was amended to add Defendant Vandelay Oakland, LLC as a respondent.

34. 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.

35. 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 June 12, 2020, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory practices in violation of the Fair Housing Act.

36. On June 29, 2020, Olkowski timely elected to have the claim asserted in HUD's Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

37. On July 5, 2020, the Administrative Law Judge assigned to the case issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceedings on Olkowski's complaint.

38. Following the Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

V. FAIR HOUSING ACT VIOLATIONS

39. Defendants, through the actions described above, have violated the Fair Housing Act by:

- a. Discriminating in the rental of and denying a dwelling to Olkowski and Plumb because of Olkowski's disability, in violation of 42 U.S.C. § 3604(f)(1)(A);

- b. Imposing discriminatory rental terms or conditions because of Olkowski's disability, in violation of 42 U.S.C. § 3604(f)(2); and
- c. Refusing to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations were necessary to afford Olkowski and Plumb an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

40. Olkowski and Plumb have suffered damages as a result of Defendants' Fair Housing Act violations. They are "aggrieved persons" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i).

41. Defendants' discriminatory actions were intentional, willful, and/or taken in disregard of the federally protected rights of Olkowski and Plumb.

WHEREFORE, the United States requests entry of an ORDER that:

- 1. Declares that Defendants' conduct, as alleged herein, violates the Fair Housing Act;
- 2. Enjoins Defendants, and all other persons in active concert or participation with them, from:
 - a. Discriminating in the rental of, or otherwise making unavailable or denying, dwellings to renters because of disability;
 - b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability;
 - c. Failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B);

- d. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of their discriminatory conduct, including implementing policies and procedures to ensure that no applicants or residents of their properties are discriminated against because of disability; and
- e. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Olkowski and Plumb to the position they would have been in but for the discriminatory conduct.

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

The United States hereby demands a trial by jury in this matter, as provided by Rule 38 of the Federal Rules of Civil Procedure. The United States further requests such additional relief as the interests of justice may require.

Dated this ___ day of July, 2020, at Milwaukee, Wisconsin.

MATTHEW D. KRUEGER
United States Attorney

By: /s/ Maura S. Flaherty

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