

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

THE UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 : CIVIL ACTION NO.
 v. :
 :
 THE PHILADELPHIAN OWNERS :
 ASSOCIATION, :
 :
 Defendant. :

COMPLAINT

1. The United States of America brings this action pursuant to 42 U.S.C. §§ 3612(o) and 3614(a) to enforce the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("the FHA").
2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3612(o) and 3614(a).
3. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) because the events giving rise to this action occurred in the Eastern District of Pennsylvania.
4. The Philadelphian is a 21-story condominium complex, containing 776 units, located at 2401 Pennsylvania Avenue, Philadelphia, Pennsylvania.
5. The condominiums at the Philadelphian are "dwellings" within the meaning of 42 U.S.C. § 3602(b).
6. Defendant, The Philadelphian Owners Association ("POA"), is the condominium association governing The Philadelphian.
7. Complainant Michele Stewart is a person with a psychological disability, which includes depression, as defined in the Act at 42 U.S.C. § 3602(h). Complainant's disability limits her major life activities, including her ability to work and to conduct a social life.

8. Michele Stewart has been a condominium unit owner at The Philadelphian since 1989.

The Defendant's policies with respect to animals residing at or visiting the Philadelphian

9. Prior to its 1980 conversion to a condominium complex, The Philadelphian was a rental apartment complex that allowed tenants to have pets.

10. In 1980, when The Philadelphian became a condominium complex, the condominium documents prohibited pets except for those already residing in the building.

11. In or around 1991, the Defendant POA issued an Amended and Restated Declaration of Condominium ("1991 policy") that stated, in relevant part, that "no dogs, cats or other non-domestic mammals ... of any kind shall be raised, bred, or kept in any Unit or in the Common Elements." The 1991 policy prohibited anyone from bringing an animal on The Philadelphian's passenger elevators. Animals already living at The Philadelphian were "grandfathered" in under this policy and could remain.

12. On or about April 3, 2000, the Defendant POA enacted a Dog Policy Resolution ("2000 policy") concerning dogs grandfathered under the 1991 policy. The 2000 policy required dog owners to pay monthly pet fees of \$25.00 and use the freight elevators and loading dock when transporting dogs, prohibited dogs in the main lobby and imposed fines of \$100 per incident for any violations or for any unregistered dogs. The 2000 policy also prohibited any visiting dogs.

13. In or around 2006, the Defendant POA adopted a revised policy ("2006 policy") that required dogs that had not been grandfathered under previous pet policies issued by the POA to be removed from The Philadelphian within thirty days and imposed a daily fine of \$100 for owners who did not comply with this policy. In addition, the 2006 policy required that all owners of dogs use the freight elevators and stay out of the main lobby or face the imposition of a fine of \$100.

14. In or around March of 2007, the Defendant POA issued a pet policy ("2007 policy") that prohibited dogs, cats, or other animals from residing in The Philadelphian complex unless the animal had been "grandfathered in" or was a "service animal" as defined by the Americans with Disabilities Act. The 2007 policy required owners of grandfathered dogs to use the freight elevator to transport their dog and, if it was out of service, to use a passenger elevator on the condition that the owner and dog transfer to an alternate freight elevator on the second floor. The 2007 policy also prohibited dogs in the main lobby, subject to a fine of \$100 per incident. In addition, the 2007 policy required that medical documentation be provided to the POA with evidence that the animal was trained if an owner with a disability was requesting an assistance animal. In cases where a person with a disability requiring an assistance animal was visiting the Philadelphian, the 2007 policy provided that the Board might approve the visitation, but only on a case-by-case basis and if a resident could provide medical certification of the visitor's need.

15. On or about May 13, 2008, the POA adopted a "Pet Issue Statement" at a condominium association open meeting. The Statement declared that dogs and cats are not permitted in The Philadelphian, unless grandfathered in 1994 or permitted under the Fair Housing Act. The Statement provided that a person must meet the requirements of the FHA, which it identified as "very strict," in order to qualify as a person with a disability. The Statement stated that "proof of such a disability may require more than just a doctor's note" and that the animal "may be required to have had individual and possible special training to distinguish the animal from an ordinary pet."

16. In or around April 2011, Defendant POA enacted a new written pet policy ("2011 policy") that it forwarded to all residents. The 2011 policy incorporated the previous

Defendant POA pet policies and further states:

Any resident requesting an exception to this Policy by a reasonable accommodation under the federal law (the Fair Housing Amendments Act) must first submit such request in writing to the POA Management Office. All such requests will be considered by the POA on a case by case basis; and reasonable accommodations may be granted upon good cause shown. If permitted by prior POA grandfathering or by a POA reasonable accommodation exception (for an approved assistance animal), only one such animal may be kept in any Unit and it must be licensed and kept in compliance with applicable Philadelphia law. All animals must be registered with the POA. No visiting animals, except ADA approved and trained service animals, are permitted anywhere in the building.

17. The 2011 policy further states that "all residents with a permitted animal are not allowed in the Main Lobby, passenger elevators, ... Main Lobby sitting rooms, Shuttle Bus, Library, Art Room, Social Rooms, Swimming Pool Area, Fitness Rooms, Management Office, Mailroom and Laundry Room." The 2011 policy requires that residents accompanying a "permitted animal" must only use freight elevators and if the freight elevators are out of service can use a passenger elevator to the second floor "but such residents must then defer to any objecting residents already on a passenger elevator."

18. The 2011 policy also states that a resident with a mobility impairment or with an approved assistance animal "may pass through the Main Lobby and any other Common Areas only for exiting or entering the building, with no stopping, standing or sitting allowed in those areas."

19. In or around April 2011, Defendant POA sent a notice and a letter to residents of The Philadelphian, including Complainant Stewart, entitled "Instructions to Physicians for Documenting Disability Under the Federal Fair Housing Act" ("Instructions") along

with the 2011 policy that stated that exceptions to the pet policy are not automatic and may require medical documentation or additional information. The Instructions require a physician to provide an opinion and documentation supporting a person's claim of disability as well as the following information: professional credentials, licenses to practice, years of practice, areas of specialization, recommended type of assistance animal, any required special training of such animal, how the animal can help the patient and observations about the animal's assistance to the patient. In addition, the Instructions state that "it may be necessary for you to testify under oath in federal court about your opinion."

20. Unless specified by the date of the policy, all of POA's policies with regard to pets will be referred to as "Defendant's pet policies."

Complainant's Request for Reasonable Accommodation

21. In a letter dated October 21, 2010, Complainant Stewart advised POA's General Manager that she was disabled and was in need of an assistance animal. The letter further indicated that Complainant would provide a written note from her doctor supporting her need for the assistance animal.

22. In a letter dated October 27, 2010, Complainant's doctor advised Defendant POA that Michele Stewart is a person who has a psychological disability which includes depression, whose major life activities are limited, and who needs an emotional assistance animal to ameliorate the effects of her disability.

23. In a letter dated November 4, 2010, Defendant POA denied Complainant's request for an assistance animal, stating she did not qualify for such an accommodation. The letter advised Complainant that she must "immediately comply" with Defendant POA's pet policies by removing

her dog from the building within thirty days or face sanctions. The letter further indicated that POA would reconsider her request if Complainant Stewart provided additional information. However, the letter contained no guidance about what additional information might be needed to enable her to maintain an assistance animal.

24. In a letter dated November 17, 2010, Complainant Stewart asked Defendant POA to identify what type of additional information would be required for reconsideration of her request for a reasonable accommodation to its pet policies.

25. In a letter dated May 10, 2011, Defendant POA's counsel advised Complainant that she must comply with the recently adopted 2011 pet policy. She was advised that she must submit a new statement from her physician in compliance with the requirements described in paragraph 19 above.

26. In a letter dated June 10, 2011, Defendant POA's counsel informed Complainant Michele Stewart that because she failed to comply with the Defendant POA's request for additional information, her pending request for a reasonable accommodation was denied under the 2011 policy. The letter further advised Complainant Stewart to remove her animal within thirty days or face sanctions.

27. Because of the application of the no-pets policies to Complainant Stewart and because of the threat of fines or other sanctions, Complainant Michele Stewart has decreased her use of the common areas, which she cannot comfortably use without her assistance animal. She has not been able to fully enjoy her dwelling unit as well as the common areas and facilities of The Philadelphian complex without restriction.

The Administrative Process

28. On January 13, 2011, the Complainant filed a fair housing complaint with HUD alleging that Defendant POA discriminated against her on the basis of her disability.

29. On March 15, 2011, HUD's Assistant Secretary for the Office of Fair Housing and Equal Opportunity ("Assistant Secretary"), filed a complaint with HUD pursuant to Section 810(a) of the FHA, alleging discrimination in housing on the basis of disability. The Secretary's complaint was amended on or about August 11, 2011³². Pursuant to the requirements of 42 U.S.C. § 3610(a), (b) and (g), the Secretary of HUD conducted an investigation of the complaints filed by Complainant Stewart and the Assistant Secretary for Fair Housing and Equal Opportunity, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered during the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Defendant committed illegal discriminatory housing practices in connection with the subject property. Therefore, on September 30, 2011, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging that the Defendant had engaged in discriminatory practices, in violation of the Fair Housing Act.

30. On October 19, 2011, Complainant Michele Stewart timely elected to have the charge resolved in a federal civil action, pursuant to 42 U.S.C. § 3612(a). The Secretary subsequently authorized the Attorney General to file this action on behalf of the Complainant, pursuant to 42 U.S.C. § 3612(o).

COUNT I

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

32. By the actions and statements set forth above, Defendant has:
- a. Discriminated against persons in the terms, conditions or privileges of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2);
 - b. Refused to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations may be necessary to afford equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
 - c. Made or caused to be made statements with respect to a dwelling that indicate a preference, limitation, or discrimination based on handicap or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

33. As a result of the conduct or actions of the Defendant, Complainant Michele Stewart has suffered damages and is an aggrieved person within the meaning of 42 U.S.C. § 3602(i).

34. The Defendants' discriminatory actions and statements as set forth above were intentional, willful, and taken in disregard for the rights of Michele Stewart.

COUNT II

35. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1 through 34 above.

36. There may be persons, other than Michele Stewart, who have been injured by the Defendant's discriminatory housing practices. Such persons are also aggrieved persons within the meaning of 42 U.S.C. § 3602(i).

37. The conduct of the Defendant described above constitutes:

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

38. The Defendant's discriminatory actions and statements as set forth above were intentional, willful, and taken in disregard for the rights of others.

WHEREFORE, the United States prays for relief as follows:

1. A declaration that the conduct of Defendant as set forth above violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*
2. An injunction against Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from:
 - a. discriminating on the basis of disability in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;
 - b. failing or refusing to notify the public that dwellings owned or operated by the Defendant are available to all persons on a nondiscriminatory basis;
 - c. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Michele Stewart and any other aggrieved persons to the position they would have been in but for the discriminatory conduct; and
 - 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 such conduct.

3. A reasonable accommodation policy at The Philadelphian that complies with the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*
4. An award of monetary damages to Michele Stewart and each other person injured by the Defendant's discriminatory practices, pursuant to 42 U.S.C. §§ 3612(o), 3613(c)(1), and 3614(d)(1)(B).
5. An assessment of a civil penalty against the Defendant in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), to vindicate the public interest.
6. The United States further prays for such additional relief as the interests of justice may require.

Dated: September 28, 2012

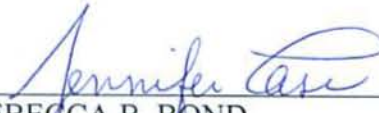
Respectfully submitted,



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Chief



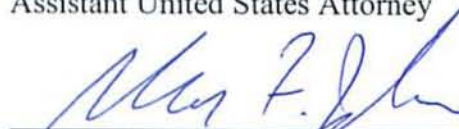
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