

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

NORTH DAKOTA FAIR HOUSING
COUNCIL, INC.; and JOSEPHINE
CONLEY,

Plaintiffs,

vs.

EARL ALLEN, individually and doing
business as ALLEN REALTY CO.,
INC., and AA&A REALTY,

Defendants.

Case No. **A1 - 03 - 119**
Judge _____

COMPLAINT; DEMAND FOR TRIAL BY JURY

I. INTRODUCTION

1. This action seeks monetary, declaratory and injunctive relief against defendants for committing discriminatory housing practices in violation of the federal Fair Housing Act.

II. JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 42 U.S.C. section 3613 and by 28 U.S.C. section 1331 in that the claim alleged herein arises under the laws of the United States. Venue is proper in that the claim alleged herein arises within Minot, North Dakota.

III. PARTIES

3. Plaintiff North Dakota Fair Housing Council, Inc. (the "Fair Housing Council") is a nonprofit corporation organized under the laws of the State of North Dakota with its principal place of business located at 533 Airport Road in Bismarck, North Dakota. One of the Fair Housing Council's specific purposes and goals is the promotion of equal opportunity in the renting, purchasing, financing and advertising of housing and the elimination of all forms of illegal housing discrimination. To this end, the activities in which the Fair Housing Council engages include, but are not limited to: providing support, encouragement and assistance to all seeking equal access to housing in North Dakota. The focus is on fair housing, and in furtherance thereof. the Fair Housing Council: (1) provides community education on fair housing issues and encourages public involvement in promoting fair housing within the community; (2) provides information, support, and assistance when possible to anyone pursuing any rights and/or remedies allowed by law related to fair housing; (3) engages in any means allowed by law to uncover systematic and/or specific acts of illegal housing discrimination; and (4) becomes involved in other housing and/or civil rights activities that will benefit residents of the State of North Dakota.

4. Plaintiff Josephine Conley is an African American person with a mental disability. At all times relevant herein, she has suffered from Major Depressive Disorder accompanied with anxiety, and therefore qualifies as a handicapped person within the meaning of 42 U.S.C. section 3602(h).

5. At all relevant times defendant Earl Allen owned, operated, and managed residential rental properties in Minot, North Dakota, which constitute dwellings within the

meaning of the federal Fair Housing Act. Mr. Allen is sued herein individually and doing business as Allen Realty Company, Inc. Also sued is Mr. Allen's closely held realty corporation, defendant AA&A Realty, through which he transacts some or all of his residential rental business.

IV. FACTS

A. INTRODUCTION

6. Defendants have engaged in a pattern or practice of unlawful discrimination on the basis of race, color and national origin, and against persons with a disability, in violation of the federal Fair Housing Act. Defendants continue to engage in such a pattern or practice of discrimination so as to constitute a continuing violation. Defendants' pattern of discrimination includes but is not limited to commission of the following discriminatory housing practices:

- A. Refusing to rent a dwelling to, or negotiate for the rental of a dwelling with, any person because of race, color, national origin, handicap or disability;
- B. Using different qualification criteria or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, rental approval procedures or other requirements because of race, color, national origin, handicap, or disability;
- C. Failing to provide or delaying maintenance or repairs to rental dwellings because of race, color, national origin, handicap or disability;

- D. Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, national origin, handicap or disability;
- E. Expressing to agents, employees or any other persons a preference for or limitation on any renter because of race, color, national origin, handicap or disability;
- F. Coercing a person, either orally or in writing, or by other means, to deny or limit the benefits provided that person in connection with the rental of a dwelling because of race, color, national origin, handicap or disability;
- G. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of race, color, national origin, handicap or disability;
- H. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the rental of a dwelling because of race, color, national origin, handicap or disability;
- I. Failing or refusing to allow reasonable accommodations based upon handicap or disability; and,
- J. Discriminating in the terms, conditions or privileges of the rental of a rental premises because of a handicap or disability.

B. THE COMPLAINT OF JOSEPHINE CONLEY

7. On July 10, 1998, Josephine Conley moved into an apartment owned by defendant Earl Allen, located at 1404 S. Main in Minot, North Dakota, after marrying William Conley, who already occupied the apartment.

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8. Mrs. Conley moved into the apartment with her therapeutic dog, Patches. Mr. Allen's office manager, Betty Clementich, told Mr. Conley that she did not think that the dog would be a problem. The Conleys had also noticed that other tenants kept pets.

9. In August 1998, Mrs. Conley wrote a letter to Mr. Allen requesting reasonable accommodation of her therapeutic dog. In the letter she explained that she suffered from a mental disability and that the dog reduced her anxiety. The letter also advised Mr. Allen that she would provide documentation from her doctor, Dr. Wayne Martinsen, if Mr. Allen thought it necessary. Mrs. Conley hand-delivered the letter to the mailbox at Mr. Allen's office.

10. In August 1998, Mrs. Conley spoke to Mr. Allen in her front yard. Mr. Allen saw the dog and acknowledged that he had received Mrs. Conley's letter. Mrs. Conley told Mr. Allen that the dog would be attending obedience school in September.

11. In September 1998, Mr. Allen threatened Mr. and Mrs. Conley with eviction if they did not get rid of Patches.

12. At Mrs. Conley's request Dr. Wayne Martinsen, Mrs. Conley's doctor, wrote a letter dated December 9, 1998, explaining that Ms. Conley's mental health benefited greatly from keeping Patches as a therapeutic animal.

13. Later that December, the radiator in the Conley's apartment exploded. Mr. Allen came to the apartment to examine the damage and saw Patches. Mr. Allen commented on Patches, and Mrs. Conley attempted to give Mr. Allen the letter from Dr. Martinsen. Mr. Allen told her that he was "too damn busy for that now."

14. On April 1, 1999, Mrs. Conley hand-delivered the letter from Dr. Martinsen to Betty Clementich and asked her to put a copy of the letter on Mr. Allen's desk.

15. On April 27, 1999, Mr. Allen sent the Conleys written notice to dispose of the dog by May 5, 1999. In response to the notice, the Conleys placed an ad seeking a new home for Patches in the Giveaway section of the Minot Daily News on April 28, 1999. On May 16, 1999, the Conleys gave Patches away.

16. In September 1999, Mr. Allen raised the Conleys rent while other tenants' rents were not increased.

17. When the Conleys moved out of the apartment in November 1999, they were charged \$25 for having had an illegal pet.

18. During Mrs. Conley's tenancy, Mr. Allen made disparaging remarks about the Conleys and other tenants. On one occasion, Mr. Allen asked a tenant if she minded that Blacks (the Conleys) were living downstairs. On another occasion he remarked that he did not want the Conley's apartment to turn into a commune like they did down south. Mr. Allen referred to Blacks as "niggers" and "savages."

19. On March 18, 1999, Mrs. Conley filed a complaint of discrimination against Mr. Allen with the Fair Housing Council.

20. On April 5, 2000, Mrs. Conley filed a complaint against Mr. Allen with U.S. Department of Housing and Urban Development.

21. On June 19, 2000, Mrs. Conley filed a discrimination complaint against Mr. Allen with the North Dakota Department of Labor. On October 28, 2002, the North Dakota Department of Labor issued a determination of no reasonable cause.

C. THE FAIR HOUSING COUNCIL'S COMPLAINT

22. On March 18, 1999, the Fair Housing Council received Josephine Conley's complaint of housing discrimination in connection with the operation of one of

[REDACTED]

Mr. Allen's residential rental properties in Minot, North Dakota. In response to that complaint, the Fair Housing Council conducted an investigation into the operation of Mr. Allen's residential rental properties between 1999 and 2003. That investigation revealed that Mr. Allen, acting individually or through his corporation AA&A Realty, engaged in a pattern and practice of discrimination against tenants and prospective tenants which included:

- A. Instructing agents and employees to discourage or refuse any rental application submitted by Native Americans;
- B. Applying different lease requirements to rental applications submitted by African Americans;
- C. Requiring African American tenants to pay their rent in cash;
- D. Refusing to rent a dwelling to a person because of his or her disability;
- E. Taking adverse actions against agents or employees who failed or refused to comply with defendants' discriminatory housing practices;
- F. Threatening and harassing former employees with knowledge of his discriminatory housing practices;
- G. Failing or refusing to allow reasonable accommodations based upon disability;
- H. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of race, color, national origin, handicap or disability;
- I. Making discriminatory statements about disabled individuals;

- J. Making discriminatory statements about African Americans;
- K. Making discriminatory statements about Native Americans;
- L. Accommodating a white disabled tenant who requested a therapeutic animal while denying an African American's request for accommodation of her therapeutic animal;
- M. Allowing white tenants to keep pets while turning down pet requests from non-white tenants; and,
- N. Failing or delaying maintenance repairs because of race or disability.

23. In response to defendants' discriminatory housing practices, the Fair Housing Council undertook -- and continues to undertake -- efforts at education and outreach, including counseling the victims of discrimination and providing residents with information regarding their fair housing rights.

D. INJURIES

24. By reason of defendants' unlawful acts and practices, the Fair Housing Council has suffered injury to its ability to carry out its purpose and to serve the public in its effort to eliminate housing discrimination, to resolve fair housing disputes, to find and to make available decent rental housing for persons which is free from discrimination and harassment. Defendants' unlawful acts and practices have also caused the Fair Housing Council to suffer economic losses in staff pay, and in the inability to undertake other efforts to end unlawful housing practices. Accordingly, the Fair Housing Council is entitled to compensatory damages.

25. As a legal result of defendants' conduct, Josephine Conley has suffered violation of her civil rights, deprivation of the full use and enjoyment of her home, loss of a housing opportunity, bodily injury, including humiliation and physical and emotional distress, out-of-pocket losses, loss of an opportunity to retain her dignity and self-esteem, and has otherwise sustained injury. Accordingly, Josephine Conley is entitled to compensatory damages.

26. In doing the acts of which plaintiffs complain, defendants and their agents and employees acted with reckless disregard for the requirements of the federal Fair Housing Act. Accordingly, plaintiffs are entitled to punitive damages.

27. There now exists an actual controversy between the parties regarding defendants' duties under federal and state fair housing laws. Accordingly, plaintiffs are entitled to declaratory relief.

28. Unless enjoined, defendants will continue to engage in the unlawful acts and the pattern or practice of discrimination described above. Plaintiffs have no adequate remedy at law. Plaintiffs are now suffering, and will continue to suffer, irreparable injury from defendants' acts and pattern or practice of discrimination unless relief is provided by this Court. Accordingly, the Fair Housing Council is entitled to injunctive relief.

V. CLAIMS

A. FIRST CLAIM

[Fair Housing Act]

29. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in this complaint.

30. Defendants have injured plaintiffs by committing discriminatory housing practices in violation of the federal Fair Housing Act, 42 U.S.C. section 3601, et seq.

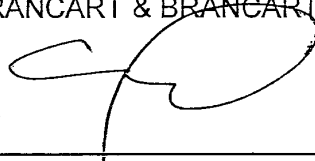
VI. RELIEF

Wherefore, plaintiffs pray for entry of judgment against defendants that:

1. Awards compensatory and punitive damages according to proof;
2. Declares that defendants have violated the provisions of the federal Fair Housing Act;
3. Enjoins all unlawful practices complained about herein and imposes affirmative injunctive relief requiring defendants, their partners, agents, employees, assignees, and all persons acting in concert or participating with them, to take affirmative action to provide equal housing opportunities to all tenants and prospective tenants;
4. Awards costs of this action, including reasonable attorneys' fees; and,
5. Awards all such other relief as the Court deems just.

Dated: September 25, 2003.

BRANCART & BRANCART



Christopher Brancart
Attorneys for Plaintiffs

VII. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby request a trial by jury.

Dated: September 25, 2003.

BRANCART & BRANCART

A handwritten signature in black ink, appearing to be 'C. Brancart', written over a horizontal line.

Christopher Brancart
Attorneys for Plaintiffs