

CV 11 - 2479

FILED  
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U.S. DISTRICT COURT E.D.N.Y.  
★ MAY 23 2011 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MELISSA FAJARDO and  
STEPHEN FAJARDO,

Plaintiffs,

-against-

HENRI PINSKER, WINDSOR HOMES  
REALTY CORP., and JOHN DOE,  
being a fictitious name for a person who owns a two-  
family home on Covert Street in Brooklyn, NY

Defendants.  
-----X

Civil Action No.  
11-CV-

BROOKLYN OFFICE

COMPLAINT

IRIZARRY, J.  
CARTER, M.J.

JURY TRIAL DEMANDED

**SUMMONS ISSUED**

Plaintiffs Melissa Fajardo and Stephen Fajardo, by their attorney, the Law Offices of Eric Dinnocenzo, for their complaint against defendants Henri Pinsker, Windsor Homes Realty Corp., and John Doe, allege as follows:

**INTRODUCTION**

1. This is a civil rights action to address housing discrimination on the basis of familial status in violation of the Federal Fair Housing Act, 42 U.S.C. § 3601 et. seq. (the "FHA"), the New York State Human Rights Law, Executive Law § 290 et seq., and the New York City Human Rights Law, Title 8 of the New York City Administrative Code § 8-101 et seq. As is set forth below, the defendants refused to rent an available apartment owned by defendant John Doe located on Covert Street in Brooklyn, which was publicly advertised for rent, to the plaintiffs because they have children who reside with them. In addition, defendants Henri Pinsker and Windsor Homes Realty Corp., as real estate brokers or agents for the subject apartment, made discriminatory statements to plaintiffs and refused to show them the subject apartment.

2. Defendants' conduct violates federal, state, and City civil rights law. It should be declared unlawful and permanently enjoined, and appropriate money damages should be awarded.

### **PARTIES**

3. Plaintiffs Melissa Fajardo and Stephen Fajardo are a married couple who at all relevant times resided in Brooklyn, New York. The plaintiffs have three children who are ages 4, 2, and 3 months and reside with them.

4. Defendant Henri Pinsker ("Pinsker") is a real estate broker or agent who has a primary office in and regularly conducts business in Brooklyn, New York.

5. Defendant Windsor Homes Realty Corp. was and still is a corporation duly organized under the laws of the state of New York with its principal place of business in Brooklyn, New York. Upon information and belief, defendant Pinsker is the owner, officer, and/or manager of Windsor Homes Realty Corp. and at all relevant times acted as an agent of the company.

6. Defendant John Doe is the fictitious name for the owner of a two-family home on Covert Street in Brooklyn. Defendant John Doe placed one of the units, a rental dwelling which has two bedrooms, in the rental market in 2011 where it was advertised to the public.

7. Upon information and belief, defendants Windsor Homes Realty Corp. and Pinsker were at all relevant times acting as agents and representatives of defendant John Doe and had a right to rent or lease the rental dwelling owned by defendant John Doe.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over the New York state law and New York City law claims pursuant to 28 U.S.C. § 1367.

9. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) because defendant Windsor Homes Realty Corp. has its principal place of business in this district, the subject apartment is located in this district, and the events giving rise to this complaint occurred in this district.

### **FACTS**

10. Plaintiffs were living in an apartment located in Brooklyn, New York with a lease term that was to end on or about May 15, 2011. Before that time, plaintiffs began searching for a new apartment for them and their children. Plaintiffs wished to move due to bad conditions in their apartment and in order to be in a better and more convenient location for their children's schooling.

11. On April 4, 2011, plaintiff Stephen Fajardo saw an advertisement on Craigslist for a two-bedroom apartment located in Brooklyn at a rental amount of \$1,300.00. The advertisement stated that the real estate broker was Windsor Homes Realty Corp. and provided a phone number for Henri at 917-400-0814; this name and phone number were for defendant Pinsker. The advertisement was for the subject apartment located on Covert Street in Brooklyn.

12. The subject apartment was also advertised on backpage.com during the relevant time period.

13. On April 4, 2011, Stephen called the phone number listed in the advertisement and defendant Henri Pinsker answered the phone. Stephen identified the apartment and asked if it was available for rent to which Pinsker responded that it was. During the call, Pinsker asked Stephen who he planned to move into the apartment with. Stephen responded that he intended to move in with his wife and children. Pinsker then replied that the landlord did not want children living in the apartment because he lives directly under the apartment and children would make too much noise. Pinsker then said that he would double-check with the landlord and call Stephen back. He never made a return phone call to Stephen.

14. Subsequently, the plaintiffs contacted Fair Housing Justice Center (“FHJC”), a non-profit organization. The mission of the FHJC is to challenge systemic housing discrimination, promote open and inclusive communities, and strengthen fair housing enforcement. To investigate allegations of unlawful conduct, the FHJC employs fair housing “testers,” or individuals who, without the intent to rent an apartment, pose as renters for the purpose of collecting evidence of discrimination. Testing has been widely-utilized by civil rights organizations to ferret out discrimination and has been introduced as evidence in scores of housing discrimination cases throughout the country.

15. In response to plaintiffs’ complaint, the FHJC conducted a testing investigation of the rental practices of defendants Pinsker and Windsor Homes Realty Corp. by having two testers contact them at the same phone number that Stephen called.

16. On April 6, 2011, Tester # 1, a white male, called defendants Windsor Homes Realty Corp. and Pinsker posing as part of a married couple with children. Tester # 1 expressed an interest in renting the subject apartment which Pinsker confirmed was

available. However, Pinsker informed the tester that the landlord would not rent to him because he did not want children to reside in the apartment. Pinsker stated, "He's not going to do that, I can tell you right off the bat. He's trying to avoid kids."

17. On April 7, 2011, Tester # 2, a Hispanic female, posing as part of a married couple without children, contacted Pinsker by telephone. He confirmed that the apartment was available and asked her how many people would be residing in the apartment. She responded that it would be her and her husband. Pinsker informed her that she could arrange to view the apartment and encouraged her to call back and leave her phone number on his voice mail, because he was not in a place where he could write down the phone number.

18. Pinsker informed Tester # 2 that the apartment is located in a two-family property on Covert Street between Knickerbocker and Irving in Brooklyn. The owner resides in the lower unit and the upper unit was for rent.

19. Pinsker twice called back Tester # 2 to encourage her to make an appointment to view the apartment. As stated, Pinsker did not call back plaintiffs to arrange for them to view the apartment.

20. The plaintiffs have not rented another apartment and their current monthly rent is \$1,500.00, which is \$200 more per month than the subject apartment. The subject apartment owned by defendant John Doe is also closer to schools that plaintiffs wish to send their child to; it is more difficult for plaintiffs to bring their children to school from their present apartment than it would be from the subject apartment.

21. Plaintiffs have suffered and continue to suffer from economic loss, emotional distress, humiliation, and inconvenience from the discrimination against them by defendants based on the fact that they were discriminated against because they have children who reside with them.

**FIRST CLAIM FOR RELIEF – Fair Housing Act (FHA)**

22. Plaintiffs repeat and reallege paragraphs 1 through 21 of the complaint as if fully set forth herein.

23. Plaintiffs are aggrieved persons who have been discriminated against by defendants based on their familial status which constitutes a violation of the FHA, 42 U.S.C. § 3601 et seq.

24. The exceptions contained in 42. U.S.C. § 3603(b)(2) do not apply to defendants Windsor Homes Realty Corp. and Pinsker.

25. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes a refusal to negotiate for rental, or otherwise making housing unavailable, or a denial of housing on account of family status in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

26. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes discrimination in the terms, conditions, or privileges of rental of a dwelling and/or in the provision of services or facilities in connection therewith, because of family status in violation of the Fair Housing Act, 42 U.S.C. § 3604(b).

27. The conduct of all defendants constitutes making statements with respect to the rental of a dwelling that indicate a preference, limitation or discrimination based on family status, and an intention to make such preference, limitation or discrimination in violation of the Fair Housing Act, 42 U.S.C. § 3604(c).

28. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes discrimination because they represented to plaintiffs, based on their familial status, that a dwelling for rent was not available when it was in fact available to rent, in violation of the Fair Housing Act, 42 U.S.C. 3604(d).

29. Plaintiffs have been injured and damaged as a result of defendants' conduct.

30. Defendants' conduct was intentional, willful, and made in disregard of the rights of others.

31. Accordingly, under 42 U.S.C. § 3613(c), plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

**SECOND CLAIM FOR RELIEF – New York State Human Rights Law**

32. Plaintiffs repeat and reallege paragraphs 1 through 31 of their complaint as though fully set forth herein.

33. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes a refusal to rent, or a denial of housing accommodation, or the withholding of a housing accommodation, because of familial status in violation of New York Executive Law § 296(5)(a)(1).

34. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes discrimination because of familial status in the terms, conditions or privileges of the rental of a housing accommodation in violation of New York Executive Law § 296(5)(a)(2).

35. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes discrimination because of familial status, since they caused to be made statements, and also made records or inquiries in connection with the prospective rental of a housing accommodation which expressed, directly or indirectly, a limitation, specification or discrimination as to familial status, as well as an intent to make such a limitation, specification, or discrimination. This conduct was in violation of the New York Executive Law § 296(5)(a)(3).

36. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes a refusal to rent housing and a refusal to negotiate for the rental of a housing accommodation because of a person's familial status in violation of the New York Executive Law § 296(5)(c)(1).

37. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes the making of a record or inquiry in connection with the prospective rental or lease of a housing accommodation that expressed a limitation, specification, or discrimination as to familial status, as well as the intent to make such a limitation, specification or discrimination, in violation of New York Executive Law § 296(5)(c)(2).

38. Upon information and belief, the conduct of all defendants constitutes aiding, abetting, inciting, compelling or coercing the doing of any of the acts forbidden by New York Executive Law § 296(5), in violation of the New York Executive Law § 296(6).

39. Plaintiffs have been injured by defendants' discriminatory conduct and have suffered damages as a result.

40. Defendants' conduct was intentional, willful, and made in disregard for the rights of others.

41. Accordingly, under New York Executive Law § 297, the plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorney's fees and costs.

**THIRD CLAIM FOR RELIEF – New York City Human Rights Law**

42. Plaintiffs repeat and reallege paragraphs 1 through 41 of their complaint as though fully set forth herein.

43. Defendants' conduct as set forth above constitutes a refusal to rent, lease, approve the rental or lease, or to otherwise deny to or withhold a housing accommodation or an interest therein because a child is or would be residing with plaintiffs, in violation of New York City Administrative Code § 8-107(5)(a)(1).

44. Defendants' conduct as set forth above constitutes discrimination against Plaintiffs, because children would be residing with them, in the terms, conditions, or privileges of the rental of a housing accommodation, in violation of New York City Administrative Code § 8-107(5)(a)(2).

45. Defendants' conduct as set forth above constitutes declarations and inquiries which express, indirectly or directly, limitations, specifications, or discrimination against plaintiffs with respect to the prospective rental of a housing accommodation because children would be residing with them. Defendants' conduct further expresses an intent to make such

limitation, specification or discrimination. This conduct was in violation of New York City Administrative Code § 8-107(5)(a)(3).

46. Defendant John Doe is not excepted from the above provisions of the New York City Administrative Code because the subject apartment was publicly advertised, listed, or otherwise offered to the general public.

47. As stated, the defendants Windsor Homes Realty Corp. and Pinsker, were and are real estate brokers, salespersons, or employees or agents thereof.

48. The conduct of defendants Windsor Homes Realty Corp. and Pinsker constitutes an illegal refusal to rent or lease, or otherwise negotiate for the rental or lease of, a housing accommodation to plaintiffs because children would be residing with them. In addition, the conduct of these defendants constitutes a representation that a housing accommodation was not available for inspection, rental or lease when it was in fact so available. These defendants' conduct also constitutes the denial or withholding of a housing accommodation because the plaintiffs had children who would be residing with them. This conduct was in violation of New York City Administrative Code § 8-107(5)(c)(1).

49. The conduct of defendants Windsor Homes Realty Corp. and Pinsker as set forth above constitutes a declaration of a statement, as well as the making of any record or inquiry, in connection with the prospective rental of a housing accommodation which expresses, directly or indirectly, a limitation, specification or discrimination as to whether children would be residing with the plaintiffs, as well as the intent to make such limitation, specification or discrimination. This conduct constitutes a violation of New York City Administrative Code § 8-107(5)(c)(2).

50. The conduct of all defendants as set forth above constitutes aiding, abetting, inciting, compelling or coercing the doing of any of the acts forbidden under New York City Administrative Code § 8-107(5), or an attempt to do so, in violation of the New York City Administrative Code § 8-107(6).

51. Plaintiffs were injured by defendants' discriminatory conduct and have suffered damages as a result.

52. Defendants' conduct was willful, intentional, and made in disregard for the rights of others.

53. Accordingly, under New York City Administrative Code §§ 8-502(a) and (f), plaintiffs are entitled to actual damages, punitive damages, injunctive relief and such other remedies as may be appropriate, and reasonable attorney's fees and costs.

#### **SERVICE ON NYCCHR and CORPORATION COUNSEL**

54. Plaintiffs have served a copy of this complaint upon representatives authorized by the New York City Commission on Human Rights and the Corporation Counsel to receive copies of complaints in actions commenced pursuant to the New York City Human Rights Law.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request judgment against defendants as follows:

- (a) Declaring that defendants' discriminatory practices violate the Fair Housing Act (42 U.S.C. § 3601 et seq.), the New York State Human Rights Law (New York Executive Law § 290 et seq.), and the New York City Human Rights Law (New York City Administrative Code § 8-107 et seq.);
- (b) Enjoining defendants and their employees or agents from:
  - (i) Refusing to rent, negotiate for the rental of, or otherwise making unavailable or denying housing to any person because they have children who reside with them;
  - (ii) Representing to any person that housing is not available for lease or rental when such housing is in fact so available, because the person has children who reside with him or her;
  - (iii) Making statements, records, or inquiries with respect to the prospective rental of a dwelling that indicate a preference, limitation, or discrimination as to whether children will be residing with a person; and
  - (iv) Discriminating in the terms or conditions of an apartment rental because a person has children who reside with him or her;
- (c) Awarding damages that will compensate plaintiffs fully for their loss of a housing opportunity and economic losses, as well as the humiliation, emotional distress, and inconvenience plaintiffs have suffered due to defendants' discriminatory conduct pursuant to 42 U.S.C. § 3613(c), New York Executive Law § 297, and New York City Administrative Code § 8-502(a) and (f);

- (d) Awarding punitive damages to plaintiffs pursuant to 42 U.S.C. § 3613(c), New York Executive Law § 297(9), and the New York City Administrative Code § 8-502;
- (e) Awarding plaintiffs reasonable attorney's fees, costs, and expenses incurred in prosecuting this action pursuant to 42 U.S.C. § 3613(c), New York Executive Law § 297(9); and the New York City Administrative Code § 8-502; and
- (f) Granting such further relief as the Court may deem just.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

Dated: New York, New York  
May 23, 2011

LAW OFFICES OF  
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