

Judge Casey

06 CV

6160

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNIFER DUNLAP and KATHRYN SMITH,

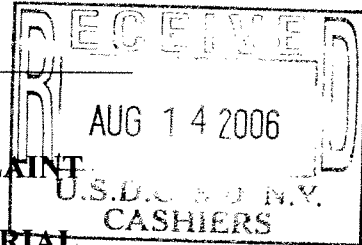
Plaintiffs,

v.

JERRY JACOBS and 358 BROADWAY LLC,

Defendants.

Civ. _____



COMPLAINT

JURY TRIAL
DEMANDED

Plaintiffs Jennifer Dunlap (“Ms. Dunlap”) and Kathryn Smith (“Ms. Smith”) by their attorneys, Latham & Watkins LLP, for their Complaint against Defendants Jerry Jacobs (“Jacobs”) and 358 Broadway LLC (“358 Broadway”), allege as follows:

NATURE OF THE ACTION

1. This is a civil action by Jennifer Dunlap and Kathryn Smith to enforce the federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601 *et seq.*, and the New York State Human Rights Law, Executive Law § 290 *et seq.*, and obtain redress for Defendant Jerry Jacobs’ sexual harassment of Plaintiffs.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1343, 28 U.S.C. § 2201 and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over the New York state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Plaintiffs and Defendants reside in New York, and the harassment of Plaintiffs occurred in New York.

THE PARTIES

4. Plaintiff Ms. Dunlap is twenty-four years old and currently resides in New York, New York. In April 2006, Ms. Dunlap met with Defendant Jerry Jacobs in connection with the rental of a room in an apartment located at 358 Broadway, New York, New York (the "Property").

5. Plaintiff Ms. Smith is twenty-six years old and currently resides in Brooklyn, New York. From October 1, 2004 to November 30, 2005, Ms. Smith rented an apartment at the Property.

6. Defendant 358 Broadway LLC is a New York corporation with a mailing address of 7 Penn Plaza, Suite 222, New York, New York. Upon information and belief 358 Broadway LLC owns the Property. Upon information and belief Jerry Jacobs and Joel Rosen are owners and officers of 358 Broadway LLC. Upon information and belief, Joel Rosen actively participates in the operations of 358 Broadway LLC.

7. Defendant Jerry Jacobs is the landlord of the Property. Upon information and belief he maintains offices on the second floor of the Property and at 40 W. 37th Street, Suite 803, in New York (the "Midtown Office") where Jacobs subjected Plaintiffs to quid pro quo sexual harassment. Upon information and belief, Defendant Jacobs actively participates in the operations of the Property and 358 Broadway LLC.

BACKGROUND

A. Jacobs' Sexual Harassment of Ms. Smith

8. In September 2004, Ms. Smith signed a one-year lease to rent apartment 3A of 358 Broadway (the "Apartment") from Jacobs.

9. When her lease ended, Ms. Smith contacted Jacobs and told him she was moving out. On Friday, October 28, 2005, Jacobs and the building superintendent visited the Apartment to perform a final walk-through of the Apartment.

10. During the walk-through, Jacobs asked Ms. Smith where she planned to move. Ms. Smith stated that she had not located alternative housing but she could no longer afford the rent at the Apartment while pursuing her career as a professional dancer.

11. Jacobs told her she could remain in the apartment for another month at a reduced rate. Jacobs then asked Ms. Smith to accompany him to his office on the second floor of the Property where he telephoned Ms. Smith's roommate and informed her that she and Ms. Smith could remain in the Apartment another month.

12. Jacobs then asked what Ms. Smith would do for him if he cut the rent in half. Ms. Smith offered to work at the Property or at a textile business he operated. Jacobs explained that he was not interested in that, and that what he wanted was "company." Jacobs said he wanted Ms. Smith to come to his office once a week for a couple of hours. He asked her if she had a boyfriend and said that she could keep their meetings a secret from him.

13. Jacobs then asked if she ever fantasized about older men. Ms. Smith was stunned and embarrassed and did not reply.

14. Jacobs told Ms. Smith she looked nervous and said that he was also nervous because he had never done this before.

15. Jacobs said that Ms. Smith should view his offer as a business decision rather than a personal decision because she could use the unoccupied room in the apartment as a dance studio. At that moment, the building superintendent walked into the office. Ms. Smith

stood up to leave and Jacobs said that they could finish talking about his offer on Monday, October 31, 2005. Jacobs asked that Ms. Smith come to his Midtown Office.

16. As Ms. Smith was leaving, Jacobs put his hand out as if to shake hands, so Ms. Smith did the same. Instead of shaking her hand, Jacobs tried to hug and kiss her. Ms. Smith quickly turned away and left the office.

17. Ms. Smith stayed in the Apartment one more month but avoided all personal contact with Jacobs. When Jacobs conducted another walk-through at the end of the month, Ms. Smith brought a male friend to ensure her safety. The walk-through proceeded without incident and Ms. Smith moved out.

18. As a result of Jacobs' discriminatory actions and harassment, Ms. Smith has suffered irreparable loss and injury including emotional distress, humiliation, embarrassment, and a deprivation of her civil rights on the basis of sex. Defendants' discriminatory actions and harassment also adversely affected Ms. Smith's work and her career as a dancer.

B. Jacobs' Sexual Harassment of Ms. Dunlap

19. In February of 2006, Ms. Dunlap learned there were two rooms available in the Apartment: a larger room for \$1,400/month and a smaller room for \$750/month. Ms. Dunlap was interested in the smaller room and in March she went to view the Apartment and meet with the current tenants, one of whom Ms. Dunlap already knew.

20. The current tenants advised Ms. Dunlap that she could move in as soon as she got permission from the landlord, Jerry Jacobs. Ms. Dunlap called Jacobs, who told her that he wanted to meet with her. Ms. Dunlap asked if she should bring anything to the meeting but Jacobs said that he just wanted to talk with her.

21. On or about Monday, March 20, 2006, at 1:00 p.m., Ms. Dunlap met with Jacobs at the Midtown Office. Ms. Dunlap expressed her interest in renting the smaller room for \$750 and offered to provide Jacobs with documentation of her income and explained that her parents would co-sign the lease if necessary. They also talked about Ms. Dunlap's career as an artist and Jacobs' interest in art.

22. Jacobs said he would discuss her application with his partner and would get back to her. Upon information and belief, this partner was Joel Rosen. Ms. Dunlap asked if she could have a decision before the end of the week. Jacobs said that was not possible, but that she should contact him the following week.

23. At the end of this meeting, a man walked into Jacobs' office and Jacobs introduced him to Ms. Dunlap. Upon information and belief, this man was Jacobs' partner, Joel Rosen.

24. Ms. Dunlap called Jacobs during the first week of April to ask if he had made a decision. Jacobs said he had not.

25. On or about April 10, 2006, Jacobs called Ms. Dunlap and told her that he and his partner would not rent her the smaller room, but that if she was "in a bind" she should let him know because he might be able to "work out a deal" for her. Ms. Dunlap stated that she was "in a bind," because her current roommates had already found someone to rent her room and she thought Jacobs might offer to rent her the room month-to-month. Jacobs told Ms. Dunlap he wanted to meet with her in person and they arranged to meet on Tuesday, April 18, 2006.

April 18, 2006 Meeting between Jacobs and Ms. Dunlap

26. Ms. Dunlap met Jacobs on April 18, 2006 at his Midtown Office at 1:00 p.m. During the meeting, Jacobs asked if Ms. Dunlap had found a room and she told him she

still needed housing. Jacobs then told Ms. Dunlap that he could not rent her the small room but that he really “liked her” and thought she was “really nice.”

27. Jacobs then stated he could give Ms. Dunlap the smaller room or both rooms for free. Ms. Dunlap asked how that would work. Jacobs asked Ms. Dunlap how she thought it would work. Ms. Dunlap, unsure, asked if he wanted to trade some of her artwork for rent.

28. Jacobs said that art was not what he was looking for. Ms. Dunlap asked what he wanted. Jacobs suggestively replied that she knew what he wanted. Ms. Dunlap, shocked and appalled, said that she was not going to give him that. Ms. Dunlap then offered to pay three months’ rent at a time and pay for the first three months in advance. Jacobs refused her offer.

29. Ms. Dunlap was distressed and shaken after leaving Jacobs’ office and she immediately called a friend and told her what happened.

30. Jacobs called Ms. Dunlap about a week later to again ask if she had found an apartment. Ms. Dunlap stated she had not and terminated the phone call. Mr. Jacobs called Ms. Dunlap on two more occasions, each time asking if she had found an apartment. During one of these conversations, Jacobs informed her that he had a few more options, but that he could not talk about them over the phone. Believing that Jacobs was going to rent her a room, Ms. Dunlap had suspended her housing search and desperately needed a place to live, so she agreed to meet with Jacobs.

April 26, 2006 Meeting Between Jacobs and Ms. Dunlap

31. On Wednesday, April 26, 2006, Ms. Dunlap went to the Midtown office to meet Jacobs as agreed. Ms. Dunlap brought a friend who waited outside Jacobs' office to ensure her safety.

32. During this meeting Jacobs again asked if she had found an apartment. Ms. Dunlap said she had not. Jacobs then stated he would rent her the rooms but it would involve "some sex."

33. Jacobs stated that she could move in the next day if he could "eat" her and if she would "eat" him. He said that if he was permitted to touch her and if she would touch him, Ms. Dunlap could have the larger room in the Apartment for the month of May "absolutely free."

34. Jacobs then stated that if she performed the sexual acts he requested, he would even let her move in that day. Ms. Dunlap told Jacobs that she thought it was unfair that he would only rent the room in exchange for sexual acts. Jacobs stated that the only acceptable monetary arrangement would be to rent both available rooms for \$2150/month with 2 months' security deposit and 1 month's rent up front, even though Jacobs knew Ms. Dunlap could not afford that rent.

35. Jacobs repeated that Ms. Dunlap could either rent both rooms, or she could perform oral sex and "touching" and have both rooms rent free. Ms. Dunlap refused. Jacobs said that was "too bad" but if Ms. Dunlap did not find alternative housing she would always have "a way out."

36. Ms. Dunlap told Jacobs that she was shocked. Jacobs responded that he had never done this before and was "really nervous," and asked Ms. Dunlap if she was "nervous." Ms. Dunlap responded that she was "shocked and appalled."

37. Ms. Dunlap left the building with her friend. Outside, Ms. Dunlap repeated the conversation she had just had to her friend.

38. As a result of Jacobs' discriminatory actions and sexual harassment, Ms. Dunlap has suffered irreparable loss and injury including emotional distress, humiliation, embarrassment, and a deprivation of her civil rights on the basis of sex. Ms. Dunlap has become less trusting in her social interactions with new people, especially with older men.

39. As a result of Jacobs' discriminatory actions and sexual harassment Ms. Dunlap was forced to rent a far less convenient and desirable apartment.

COUNT I

Violation of § 3604 of the Fair Housing Act **(42 U.S.C. § 3604, 3617)**

40. Plaintiffs repeat and reallege paragraphs 1 through 39 of their complaint as though fully set forth herein.

41. Defendants' conduct constitutes a denial of housing or making housing unavailable on the basis of sex, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a).

42. Defendants' conduct constitutes discrimination in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, on the basis of sex, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b).

43. Defendants' conduct constitutes the making of statements with respect to the rental of a dwelling that indicate a preference, limitation, or discrimination on the basis of sex, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c).

44. Defendants' conduct constitutes coercion, intimidation, or interference with the Plaintiffs in the exercise or enjoyment of their rights under Section 804 of the Fair Housing Act in violation of Section 818 of the Fair Housing Act, 42 U.S.C. § 3617.

45. Ms. Smith and Ms. Dunlap are aggrieved persons as defined in 42 U.S.C. § 3602(i), have been injured by the Defendants' discriminatory conduct, and have suffered damages as a result.

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

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

COUNT II
Violation of New York State Executive Law
(Article 15 § 296)

48. Plaintiffs repeat and reallege paragraphs 1 through 39 of their complaint as through fully set forth herein.

49. Defendants' conduct constitutes a denial of housing accommodation or the withholding of a housing accommodation on the basis of sex, in violation of Article 15 of the New York Executive Law § 296(5)(a)(1).

50. Defendants' conduct constitutes discrimination on the basis of sex in the terms, conditions or privileges of the rental of a housing accommodation or in the furnishing of facilities and services in connection therewith in violation of Article 15 of the New York Executive Law § 296(5)(a)(2).

51. Defendants' conduct constitutes the making of statements in connection with a housing accommodation which expresses, directly or indirectly, any limitation,

specification or discrimination on the basis of sex, or any intent to make any such limitation, specification or discrimination, in violation of Article 15 of the New York Executive Law § 296(5)(a)(3).

52. Ms. Smith and Ms. Dunlap have been injured by the Defendants' discriminatory conduct and have suffered damages as a result.

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

54. Accordingly, under Article 15 of the New York Executive Law § 297, the Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Ms. Smith and Ms. Dunlap respectfully request judgment against the Defendants as follows:

- (a) Declaring that Defendants' discriminatory practices violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;
- (b) Enjoining Defendants, Defendants' agents, employees, and successors, and all other persons in active concert or participation from:
 - (i) Denying housing or making housing unavailable on the basis of sex;
 - (ii) Discriminating in the terms, conditions or privileges of the rental of a dwelling or in the provision of services or facilities in connection therewith, on the basis of sex;

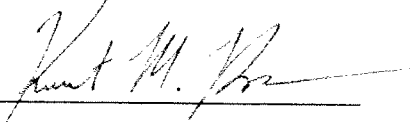
- (iii) Making, printing or publishing any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination on the basis of sex;
- (iv) Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;
- (v) Failing or refusing to take affirmative steps necessary to restore, as nearly as practicable, the victims of the Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;
- (c) Awarding Plaintiffs actual damages against Defendants according to proof at trial;
- (d) Awarding Plaintiffs punitive damages against the Defendant according to proof at trial;
- (e) Awarding Plaintiffs reasonable attorneys' fees, costs and expenses incurred in prosecuting this action; and
- (f) Granting Plaintiffs such other further relief as may be just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial on the merits by jury pursuant to Fed. R. Civ. P. 38.

Dated: August 14, 2006
New York, New York

LATHAM & WATKINS LLP

By: _____

Kurt M. Rogers
885 Third Avenue, Suite 1000
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864

Attorneys for Jennifer Dunlap
and Kathryn Smith