

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV

06 6637

FRENETTE LUBIN and
SHARON L. MCGRUDER,

Plaintiffs,

v.

MAX SHALOM, STEVEN APUZZI LLC and
264 REALTY LLC

Defendants.

Civ. _____

COMPLAINT

COGAN, J.

JURY TRIAL

DEMANDED

MANN, M.

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

DEC 14 2006

BROOKLYN OFFICE

Plaintiffs, Frenette Lubin ("Ms. Lubin"), by her attorneys, Latham & Watkins LLP, and Sharon L. McGruder ("Ms. McGruder"), by her attorneys, Emery Celli Brinckerhoff & Abady LLP, for their Complaint against Defendants Max Shalom ("Defendant Shalom" or "Mr. Shalom"), Steven Apuzzi LLC ("Apuzzi") and 264 Realty LLC ("264 Realty"), allege as follows:

INTRODUCTION

1. This is a civil rights action seeking damages and injunctive relief for defendants' violations of plaintiffs' rights under the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the "FHA"), the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982, the New York State Human Rights Law, New York Executive Law § 290 *et seq.*, and the New York City Human Rights Law, New York Administrative Code § 8-107 *et seq.*

2. Plaintiffs Frenette Lubin, of Haitian descent, and Sharon McGruder, an African American, each separately sought to apply for an apartment rental from defendants in

Bensonhurst, Brooklyn but were refused the opportunity to apply, and in the case of Ms. McGruder, expressly told that the apartment was no longer available for viewing, even as a white applicant was expressly, repeatedly told that the apartment was available for viewing, and encouraged to apply. The same white applicant was also told that the building in which the apartment was located had "no welfare . . . [is] predominantly Eastern European," that the landlord was "very fussy about who he'll take," and that the "super[intendent] is an ethnic."

3. Defendants' shameful discriminatory behavior has caused harm to Ms. Lubin and Ms. McGruder, and has unquestionably violated Plaintiffs' federal and state statutory rights as well as those granted under the city administrative code. This action seeks redress for those violations and the harm Defendants have caused.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 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.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the Plaintiffs and Defendant Shalom reside in this district, Defendants Apuzzi and 264 Realty reside in New York, the property that is the subject of the action is situated in this district, and a substantial part of the events giving rise to this complaint occurred in this district.

THE PARTIES

6. Plaintiff Ms. Lubin is a 50 year-old black female of Haitian descent who currently resides in Brooklyn, New York. On May 7, 2006, Ms. Lubin met with Defendant

Shalom in connection with the rental of an apartment located at 264 Avenue O, Brooklyn, New York (the "Property" or the "Apartment").

7. Plaintiff Ms. McGruder is a 57 year-old African-American woman who resides in New York, New York. On May 23, 2006, Ms. McGruder met with Defendant Shalom in connection with the rental of the Apartment.

8. Defendant Max Shalom is the real estate broker who showed the Property to Ms. Lubin. Mr. Shalom did not permit Ms. Lubin to submit an application for the apartment, and shortly thereafter told Ms. McGruder that the Property was no longer available for viewing even as he later told a white applicant that it was. Upon information and belief, Mr. Shalom is a licensed Real Estate Salesperson in the employ of Steven Apuzzi LLC (aka Apuzzi Realty) and maintains offices at 381 Park Avenue South, Suite 1421, New York, New York.

9. Defendant Steven Apuzzi LLC is the real estate brokerage company that listed the Property for rental. Upon information and belief, Steven Apuzzi LLC is a New York corporation with offices at 381 Park Avenue South, Suite 1421, New York, New York. Upon information and belief, Steven Apuzzi LLC is the corporation employing Defendant Shalom and managed the rental of the Property.

10. Defendant 264 Realty LLC is the owner of the Property. Upon information and belief, 264 Realty LLC is a New York corporation with offices at 734 W. Broadway, Woodmere, New York.

11. Upon information and belief, Defendants Max Shalom, Steven Apuzzi LLC and 264 Realty LLC are in the business of renting dwellings within the meaning of the FHA, 42 U.S.C. § 3603(c).

12. Upon information and belief, at all times relevant hereto, Defendants Max Shalom, Steven Apuzzi LLC and 264 Realty LLC have acted in concert and with knowledge, approval and awareness of each other's actions with respect to the rental or refusal to show or rent the Apartment.

BACKGROUND

Ms. Lubin Attempts to Apply for the Apartment

13. In May 2006, Ms. Lubin began searching for a two-bedroom apartment for herself and her son Nicholas, a 17 year old high school student. At that time, Ms. Lubin and her son were sharing a one-bedroom apartment and Ms. Lubin wanted to find a larger apartment in the Bensonhurst neighborhood near her son's school. Ms. Lubin and her son also needed to move to a new place because their apartment at the time was in a basement and the humidity aggravated her rheumatoid arthritis.

14. Ms. Lubin has been gainfully employed by the New York City Administration for Children's Services for the last 17 years.

15. On May 4, 2006, Ms. Lubin's adult daughter, Sophia Lubin, saw Defendants' advertisement listing the Apartment, a two-bedroom unit on the fourth floor of a building in Bensonhurst listed at \$1,090 per month, on the internet website Craigslist. Sophia Lubin called the telephone number listed in the advertisement and reached an answering machine for Defendant Shalom. Sophia Lubin left a message describing her interest in the Apartment and asked Mr. Shalom to return her call.

16. The next evening, May 5, 2006, Defendant Shalom called Sophia Lubin. Sophia Lubin asked Mr. Shalom if the Apartment was still available. Mr. Shalom said the

Apartment was available and Sophia Lubin made a tentative appointment for her mother to see the Apartment on May 7, 2006 and told Mr. Shalom she would call him back to confirm the appointment. Mr. Shalom gave Sophia Lubin his cellular telephone number and on the morning of May 7, 2006, Sophia Lubin called that number to confirm the appointment for that day.

17. When they arrived for their appointment, Ms. Lubin and Sophia Lubin met Defendant Shalom on the street in front of the Apartment and were directed up the stairs to view the Apartment.

18. When Mr. Shalom showed the Apartment to Ms. Lubin and Sophia Lubin his manner was dismissive—he spoke very little, shrugged his shoulders and rolled his eyes—which led Ms. Lubin to think that Mr. Shalom was not interested in renting the Apartment to her.

19. Defendant Shalom asked Ms. Lubin how many years she had been working and Ms. Lubin told him that she had been employed by the City of New York for 17 years. In response, Defendant Shalom shrugged, said “okay,” and told Ms. Lubin that he would contact her.

20. Sophia Lubin asked what her mother would need to do in order to proceed and was told that Ms. Lubin would need to complete an application. Mr. Shalom held a folder in his hands but claimed that he did not have any applications with him and said he would call that evening about getting Ms. Lubin an application.

21. Despite his assurances, Defendant Shalom did not call Ms. Lubin on the evening of May 7, 2006.

22. The next morning, May 8, 2006, Ms. Lubin called Defendant Shalom to inquire about the application for the Apartment. Mr. Shalom claimed he needed to call his office first and promised to call Ms. Lubin back that afternoon.

23. When Defendant Shalom did not call Ms. Lubin on the afternoon of May 8, 2006, as promised, Ms. Lubin called her daughter and told her that she had been unable to get an application from Mr. Shalom.

24. Sophia Lubin called Defendant Shalom on her mother's behalf and left a message on his cellular telephone that included Ms. Lubin's fax number to which he could fax an application.

25. The next day, May 9, 2006, Sophia Lubin called Defendant Shalom again when she saw that the Apartment had been re-advertised on the internet website Craigslist and that the rent had been lowered to \$1,050 per month. Sophia Lubin called the number listed in the advertisement, Defendant Shalom's office number, and left a message telling Mr. Shalom that she was surprised to see the Apartment re-advertised and reiterating her mother's interest in the Apartment. Mr. Shalom did not return this phone call either.

26. Despite Ms. Lubin's efforts and those of her daughter, Mr. Shalom never provided Ms. Lubin with an application for the Apartment. Defendant Shalom likewise never provided Ms. Lubin or her daughter with an explanation as to why she was not permitted to apply for the Apartment.

A White Tester Inquires About the Apartment

27. Based on her belief that Defendants had discriminated against her and feeling upset and disturbed by defendants' conduct, Ms. Lubin contacted the Fair Housing Justice Center ("FHJC"), a program of HELP USA. As part of its activities, the FHJC challenges discrimination that restricts access to housing, including by arranging for fair housing "testers"—individuals who pose as renters for the purpose of testing the conduct of landlords, agents, and others to determine whether discrimination is taking place. In response to Ms.

Lubin's complaint, the FHJC conducted a testing investigation of the Defendants' housing practices.

28. On May 19, 2006, a white female tester (the "White Tester") who is in her twenties called Defendant Shalom and left a message inquiring about the Apartment. Several hours later Mr. Shalom returned the call and left a message. The White Tester called Mr. Shalom back and was told that the rent was \$1,090 and that they were looking for a tenant with an income forty times the rent (\$44,000) and good credit. The White Tester told Mr. Shalom that she had been employed at her job for two years and, together with her boyfriend, had a combined income of \$46,800, an amount slightly less than Ms. Lubin's annual income. Mr. Shalom said this was not a problem and indicated that the White Tester would need one month's rent, one month's security deposit and a \$75 application fee for the Apartment. Mr. Shalom and the White Tester arranged to meet on May 21, 2006.

29. The White Tester was unable to make the original appointment. Mr. Shalom nevertheless tried repeatedly to accommodate her and reschedule the viewing—calling her a number of times over the course of the evening of Sunday, May 21 and the morning, Monday, May 22, to set up a new appointment. Finally, the White Tester told Mr. Shalom on Monday that she was unable to look at the Apartment in the next day or two, but would call him later in the week to schedule a viewing.

Ms. McGruder Inquires About the Apartment

30. That same day, Monday, May 22, 2006, Plaintiff Ms. McGruder, a fifty-seven year old African-American tester, called Defendant Shalom and left a message inquiring about the Apartment.

31. The next day, Tuesday, May 23, 2006, Ms. McGruder called again and left a message in which she asked for an appointment to view the Apartment. This time, Defendant Shalom returned the call and left a voicemail, acknowledging Ms. McGruder's several prior messages and informing her that an application had been submitted on the Apartment, and that he would only show her the Apartment once he had a disposition on the pending application.

32. Later on May 23, 2006 Ms. McGruder visited the offices of Apuzzi, where she met Mr. Shalom, who initially seemed unwilling to let her into his offices. Then, after Ms. McGruder identified herself as someone who had called about the advertisement on Craigslist, Mr. Shalom repeatedly noted that he had left her a message telling her that the Apartment couldn't be viewed because an application had been submitted for the Apartment. Ms. McGruder explained that her job was situated close to the Apartment so she was interested in something close to that location. She also told him that she had an income of \$48,000, an amount slightly higher than Ms. Lubin's annual income, and had been employed at her job for fifteen years.

33. Mr. Shalom directed her toward apartments in other locales, in what he called the "outskirts of Bensonhurst" or Dyker Heights, located at 77th Street and 17th Avenue in Brooklyn, and another "off of 25th Avenue," but he did not agree to show Ms. McGruder any apartments that day. Instead, Mr. Shalom said that she would have to check back the next day. He said that it was a "very tight market" for renters.

34. On information and belief, the other locales to which Mr. Shalom directed Ms. McGruder are more racially mixed than the area where the Apartment is located.

35. Ms. McGruder sensed throughout the interaction that Mr. Shalom was not treating her as a potential customer - he did not volunteer information or offer to schedule any

appointments to show her apartments, even for the one he mentioned on “the outskirts of Bensonhurst.”

The Apartment Remains Available to the White Tester After Defendant Shalom Tells Ms. McGruder That the Apartment Is Unavailable

36. The following day, Wednesday, May 24, 2006, the White Tester called Defendant Shalom again and asked if the Apartment was still available. Mr. Shalom told her it was and they scheduled an appointment to see it the morning of May 26, 2006.

37. On the morning of May 26, 2006, the White Tester, who is in fact, and appears to be, in her twenties, met Defendant Shalom in front of the Apartment and told Mr. Shalom that the Apartment would be for her, her boyfriend and her boyfriend’s teenage son. Mr. Shalom said that the Apartment was available immediately. The White Tester informed him that her and her boyfriend’s credit was good, that she had been employed at her job for two years, and that their combined income was \$46,800.

38. Mr. Shalom volunteered information about the building, telling the White Tester that “there’s no welfare in here, [it’s] predominantly Eastern European, most of the building” and that there “aren’t too many kids . . . very few kids.” Mr. Shalom explained that the landlord is “very fussy about who he’ll take.” Mr. Shalom also told the White Tester that the “super[intendent] is an ethnic.”

39. The White Tester asked for an application. Defendant Shalom explained that he could not give her an application unless she was going to submit it. Mr. Shalom told her to talk to her boyfriend and to call him back. Mr. Shalom also told her that if their credit was good, they should have no problem getting the Apartment.

COUNT I
Federal Fair Housing Act
(42 U.S.C. § 3601 et seq.)

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

41. Defendants' conduct, including, without limitation, their refusal to allow Ms. Lubin to apply for or rent the Apartment and their refusal to show Ms. McGruder the Apartment or allow her to apply for it, constitutes a refusal to negotiate for rental, or otherwise making housing unavailable, or a denial of housing on the basis of race, color or national origin in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a).

42. Defendants' conduct, including, without limitation, their refusal to allow Ms. Lubin to apply for or rent the Apartment and their refusal to show Ms. McGruder the Apartment or allow her to apply for it, and their steering of Ms. McGruder towards apartments in other locations, 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 race, color or national origin in violation of the Fair Housing Act, 42 U.S.C. § 3604(b).

43. Defendants' conduct, including, without limitation, their dismissive and discouraging statements to Ms. Lubin and her daughter, their misrepresentations to Ms. McGruder about the Apartment's status and availability for viewing, and their steering of Ms. McGruder toward apartments in other locations, constitutes making statements with respect to the rental of a dwelling that indicate a preference, limitation or discrimination based on race, color, or national origin, and an intention to make such preference, limitation or discrimination in violation of the Fair Housing Act, 42 U.S.C. § 3604(c).

44. Defendants' conduct, including, without limitation, their dismissive and discouraging statements to Ms. Lubin and her daughter, their outright refusal to provide an application, and their misrepresentations to Ms. McGruder about the Apartment's status and availability for viewing, constitutes representations made because of race, color or national origin that a dwelling was not available for inspection or rental when such dwelling was in fact so available in violation of the Fair Housing Act, 42 U.S.C. § 3604(d).

45. Ms. Lubin and Ms. McGruder 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), Plaintiffs are entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

COUNT II
Federal Civil Rights Act
(42 U.S.C. § 1981 and § 1982)

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

49. Defendants' conduct as set forth above prevented Ms. Lubin and Ms. McGruder from enjoying the same right to make and enforce contracts as is enjoyed by white citizens under Section 1981 of the Civil Rights Act of 1866 and the same right to lease real property as is enjoyed by white citizens under Section 1982 of the Civil Rights Act of 1866.

50. Ms. Lubin and Ms. McGruder have been injured by the Defendants' discriminatory conduct and have suffered damages as a result.

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

52. Accordingly, pursuant to 42 U.S.C. §§ 1981, 1982 and 1988, the Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

COUNT III
New York State Human Rights Law
(New York Executive Law § 290 *et seq.*)

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

54. Defendants' conduct as set forth above constitutes a refusal to rent, or a denial of housing accommodation, or the withholding of a housing accommodation or the representation that a housing accommodation is not available for inspection or rental when in fact it is so available, because of race, color or national origin in violation of Article 15 of the New York Executive Law § 296(5)(a)(1).

55. Defendants' conduct as set forth above constitutes discrimination because of race, color or national origin in the terms, conditions or privileges of the rental of housing accommodation or in the furnishing of facilities or services in connection therewith in violation of the New York Executive Law § 296(5)(a)(2).

56. Defendants' conduct as set forth above constitutes refusal to rent housing accommodation or to refuse to negotiate for the rental of housing accommodation or to represent

that a housing accommodation is not available for inspection or rental when in fact it is so available because of a person's race, color or national origin in violation of the New York Executive Law § 296(5)(c)(1).

57. Upon information and belief, Defendants' conduct as set forth above 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).

58. Ms. Lubin and Ms. McGruder have been injured by the Defendants' discriminatory conduct and have suffered damages as a result.

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

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

COUNT IV

New York City Human Rights Law **(New York City Administrative Code § 8-107)**

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

62. 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 of the Plaintiffs' actual or perceived race, creed, color or national origin in violation of New York City Administrative Code § 8-107(5)(a)(1)

63. Defendants' conduct as set forth above constitutes discrimination against Plaintiffs because of the Plaintiffs' actual or perceived race, creed, color or national origin in violation of New York City Administrative Code § 8-107(5)(a)(2).

64. Defendants' conduct as set forth above constitutes discriminatory practice by real estate brokers in refusing to rent or lease any housing accommodation or to negotiate for the rental or lease of any housing accommodation because of Plaintiffs' actual or perceived race, creed, color or national origin in violation of New York City Administrative Code § 8-107(5)(c)(1).

65. Upon information and belief, Defendants' conduct 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).

66. Ms. Lubin and Ms. McGruder have been injured by the Defendants' discriminatory conduct and have suffered damages as a result.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs 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.*, the Federal Civil Rights Act, as amended, 42 U.S.C. §§ 1981, 1982, the New York State Human Rights Law, New York Executive Law § 290 *et seq.*, and the New York City Human Rights Law, New York Administrative Code § 8-107 *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 race, color or national origin;
 - (ii) 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 race, color or national origin;
 - (iii) 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;
 - (iv) 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 such damages as will compensate Plaintiffs fully for any loss of a housing opportunity and economic losses as well the humiliation, embarrassment, emotional distress and inconvenience suffered due to Defendants' discriminatory conduct;
- (d) Awarding punitive damages to Plaintiffs;

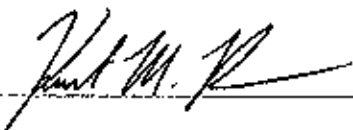
- (e) Awarding Plaintiffs reasonable attorneys' fees, costs and expenses incurred in prosecuting this action; and
- (f) Granting Plaintiffs such other further relief as may be just and proper.

JURY DEMAND

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

Dated: December 14, 2006
New York, New York

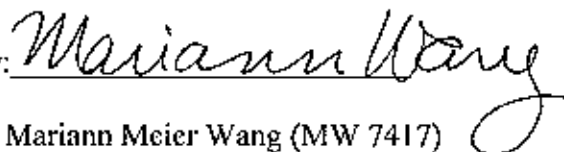
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