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Complaint, Malek v. Farris, Docket No. 1:05-cv-00792 (Northern District of Illinois Apr 05, 2005)

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEB 08 2005

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

JOYCE MALEK)
)
 Plaintiff,)
)
 v.)
)
 ELSIE FARRIS,)
 R.E. MANAGEMENT, INCORPORATED)
)
 Defendants.)

Case # **05C 0792**
Judge **JUDGE COAR**
MAGISTRATE JUDGE DENLOW

COMPLAINT

Plaintiff, JOYCE MALEK, by her attorney Sandra Franco, Senior Law Student, and THE JOHN MARSHALL LAW SCHOOL FAIR HOUSING LEGAL CLINIC, complains that Defendants ELSIE FARRIS, FARRIS COURT APARTMENTS, and R.E. MANAGEMENT, INCORPORATED, discriminated against her on the basis of disability in violation of the federal Fair Housing Act.

NATURE OF CASE

1. This Complaint arises out of Defendants' denial of Plaintiff's requests for reasonable accommodations for her disabilities and Defendants' retaliation against Plaintiff because she requested reasonable accommodations. The plaintiff requested, but was never given, both a first floor apartment and a handicapped parking spot from the Defendants. Defendants then retaliated against Plaintiff by sending a letter stating:

"Do (sic) to the fact that there is so much controversy on the new apartment with you we have rented it to someone else. We have tried to *accommodate* you but after the last

conversation with you I can tell you will not be happy living here. So in best interest to all concern (sic) *your lease will not be renewed.*" (Emphasis added).

JURISDICTION AND VENUE

2. Federal jurisdiction is proper under 42 U.S.C. §3613, and 28 U.S.C. §1331,

3. Venue is proper in this district under 28 U.S.C. §1391(b) and (c) because the property in question is located in this district in Ingleside, Il., all of the defendants reside in this district, and a substantial part of the events giving rise to this action occurred in this district.

PARTIES

4. Plaintiff JOYCE F. MALEK ("Ms. Malek") is a forty-nine year old female who has been diagnosed with diabetes, osteoporosis, congenital heart disease and pancreatic cancer. She was a legal occupant at 508 Lincoln Ave. Apt. #205 Ingleside, IL. 60041 ("Unit 205") from June 1999 to May 2002. During that time Joyce Malek received and continues to receive housing assistance payments from the Lake County Housing Authority because of her disability. Due to her disabilities, Ms. Malek has trouble walking and climbing stairs, and uses a cane. Ms. Malek currently resides in Fox Lake, IL.

5. Defendant R.E. MANAGEMENT, Inc. ("R.E. Management") was at all relevant times the management corporation the building located at 508 Lincoln Ave. ("Farris Court Apartments").

6. Defendant ELSIE FARRIS ("Mrs. Farris") at all relevant times was an owner of Farris Court Apartments and was president of R.E. Management.

FACTS

7. Farris Court Apartments consists of 4 buildings with 12 units and 1 building with 8 units.

8. In May 1999, Ms. Malck spoke to Robert Farris, the husband of Mrs. Farris, regarding renting a unit at the Farris Court Apartments. Ms. Malek informed Mr. Farris that she had a handicap housing certificate and needed to be on the first floor due to her mobility impairment. Mr. Farris, who was the owner and manager of Farris Court Apartments, told her that a first floor apartment, Unit #104, would be available shortly. He explained to Ms. Malek that Unit #104 was being vacated, cleaned and painted.

9. In June 1999, Ms. Malek's housing representative, Corrine Jordan, agreed to let Ms. Malek rent an upstairs apartment until Unit #104 was ready. Thereafter, she rented Unit #205 at Farris Court Apartments, from Mr. Farris, using a Section 8 voucher.

10. In or about July/August 1999, Mr. Farris passed away. Brian Foster ("Mr. Foster") became the new building manager. Prior to August 1999, Mr. Foster was a general maintenance employee and was employed by Mr. Farris.

11. In his capacity as building manager, Mr. Foster was acting as an agent of R.E. Management and Mrs. Farris.

12. In August 1999, Ms. Malek explained to Mr. Foster that she needed a handicap parking spot and a first floor apartment because she had trouble climbing the stairs. Mr. Foster was aware of the agreement between Mr. Farris and Ms. Malek that she was to rent Unit #104 as soon as it was ready.

13. In August 2000, Unit #104 was rented to Nancy Ketchum rather than Ms. Malek.

14. In August 2000, after Nancy Ketchum moved in, Ms. Malek approached Mr. Foster to ask why she didn't get to rent Unit #104. He replied that he would speak to Mrs. Farris about renting a first floor apartment.

15. In August 2000, Ms. Malek encountered Mrs. Farris in the hall. She asked Mrs. Farris whether she can rent a first floor apartment because of her difficulty in climbing stairs. Mrs. Farris became very upset and started yelling at Ms. Malek and directed Ms. Malek to take the issue up with Mr. Foster.

16. A few days after Ms. Malek's encounter with Mrs. Farris, Mr. Foster went to visit Ms. Malek. Ms. Malek again explained to Mr. Foster that she needed a first floor apartment and that Mrs. Farris directed her to speak with him. He told her that Mrs. Farris said Ms. Malek could have a different apartment in another building.

17. The apartment that was offered to Ms. Malek was located in the basement, six stairs down. Ms. Malek explained to Mr. Foster that she cannot negotiate the stairs to this apartment because of her disability.

18. In December 2000, Lois Deschuer, a handicapped tenant living in apartment #105, called the police on Ms. Malek for parking in a handicapped spot which Ms. Deschuer claimed was assigned to her.

19. Shortly thereafter, Ms. Malek spoke to Mr. Foster and again requested a handicapped parking spot.

20. In February of 2001, Nancy Ketchum moved out of Unit #104.

21. In March 2001, Mike Lancaster ("Mr. Lancaster") became building manager of the Farris Court Apartments.

22. In his capacity as building manager, Mr. Lancaster was acting as an agent of R.E. Management and Mrs. Farris.

23. Soon after Mr. Lancaster became building manager, Ms. Malek tried to impose upon Mr. Lancaster how desperately she needed to be in a first floor apartment due to her disability and that she also needed a handicapped parking spot. Mr. Lancaster replied that he would see what he could do.

24. Mr. Lancaster was fully aware of Ms. Malek's disability because he had lived in the apartment across from her at one time and had seen her struggle with the stairs many times. At one point, Mr. Lancaster offered his assistance to her.

25. In March 2001, Unit #104 became available again and the unit was not given to Ms. Malek despite her repeated requests for a first floor apartment. Nicki Keisken moved into the apartment in March 2001.

26. In March 2001, Ms. Malek's disability progressed to the point where she required the use of a cane. Though she should have used a quad cane, she had to settle for a straight cane because the stairs to her unit were too narrow.

27. In early April, Ms. Malek spoke with attorney Lawrence W. Smith at Prairie State Legal Services, who took her information and sent Mrs. Farris a letter dated April 6, 2001, stating, in pertinent part:

"Ms. Malek had been promised the first available ground level apartment by Robert. I understand that Ms. Malek approached you in the beginning of February and renewed her request for an accommodation of her handicap. I also understand that thereafter, an apartment became available but it was given to someone else.... Ms. Malek requests the very next available first floor apartment."

28. Shortly thereafter, Mr. Lancaster told her Unit #101, a first floor apartment, would soon become available.

29. In September 2001, Mr. Lancaster told Ms. Malek she could move into Unit #101 after it was rehabbed.

30. On or about September 6, 2001, Ms. Malek received a doctor's note from Doctor Harry L. Ginsberg, M.D. ("Dr. Ginsberg") The note read:

"This is to certify that Joyce Malck has Diabetes with severe Neuropathy + Requires a First Floor Apartment...."

31. Dr. Ginsberg also informed Ms. Malek that climbing stairs would make her situation worse. Ms. Malek subsequently informed Mr. Lancaster of what Dr. Ginsberg said about the stairs and gave him the doctor's note.

32. In October 2001, Ms. Malek inquired about the availability of Unit #101, and Mr. Lancaster replied she could move in by Thanksgiving. He told her they had a few repairs around the buildings, and then they would start to rehab Unit #101. Ms. Malek again informed Mr. Lancaster that she still needed a handicapped parking spot.

33. In November 2001, after Defendant's had knowledge that Ms. Malek's health condition was getting worse because she had to climb so many stairs, Ms. Malek's foot broke while walking down the steps of Defendant's apartment building.

34. Defendants were aware of Ms. Malck's disability and owed her a duty to rectify this dangerous situation; they failed to do so.

35. After Thanksgiving, Defendants failed to allow Ms. Malek to move to Unit #101. Ms. Malek then went to see Mr. Lancaster. He told her that the rehab would not take long and

she would be able to be in Unit #101 by Christmas. Ms. Malek told him she had been living out of boxes since September. He told her to be patient and that the wait would not be long.

36. In December 2001, Ms. Malek was diagnosed with osteoporosis.

37. After Ms. Malek's hospital visits in December 2001, Dr. Ginsberg and Dr. Hall warned her again of the dangers concerning her leg impairments and climbing the stairs.

38. After Christmas, Ms. Malek again explained to Mr. Lancaster that she was in poor health and that she was desperate to be in a first floor apartment. She explained to him that she was not able to carry her groceries, laundry, and garbage up and down the stairs. She also told him that her leg injury was getting worse because she kept having to walk up and down the stairs.

39. On December 28, 2001, Mr. Lancaster told Ms. Malek that once they begin the work downstairs that it would not be that long. He told her that she would be able to move downstairs by January 1, 2002 or shortly thereafter.

40. During the second week of January 2002, Ms. Malek met with Mr. Lancaster and Ms. Heidon, her housing representative from the Lake County Housing Authority, to sign a lease approval for Unit #101. Mike Lancaster explained to Ms. Malek that Lake County Housing Authority would be able to pay for the rent increase due to the renovations made in Unit #101 and that she would be downstairs by February 1, 2002. The lease renewal was then signed by Ms. Malek.

41. During the last week of January 2002, Ms. Malek arranged for people to help her move and scheduled her utilities to be transferred to Unit #101.

42. During the last three days of January, Ms. Malek tried to contact Mr. Lancaster three times via phone, but to no avail. He did not answer or return any of her phone calls.

43. On February 1, 2002, Ms. Malek called Ms. Heidon to inquire about her move. Ms. Heidon informed her that the rent requested for Unit #101 by Farris Court Apartments was too high and she could not approve the apartment without two other comparable rents in the area. Ms. Malek was upset because no one had notified her of any problems prior to her signing the lease renewal.

44. Before noon on February 1, 2002, she paged the management to find out what was happening.

45. Ms. Malek had a doctor appointment and returned home around three o'clock and there was a message on her answering machine from Ms. Heidon. Ms. Heidon explained that Mrs. Farris had found comparable rent for apartments in the area and that she would be out to inspect Unit #101 on Monday, February 4, 2002.

46. At 6:00 p.m. on February 1, 2002, Mrs. Farris finally called Ms. Malek. This was only the second time Mrs. Farris had ever spoken to Ms. Malek. Ms. Malek asked Mrs. Farris what the plan was for Monday. She told Ms. Malek that the Lake County Housing Authority was coming to inspect Unit #101. At that time, Ms. Malek was informed for the first time that she had to pay \$50.00 for a Fire Marshall inspection fee.

47. Ms. Malek asked Mrs. Farris why she had to pay the fee and why she was not previously informed of the fee. Mrs. Farris became very upset with Ms. Malek, and said everyone has to pay the fee and if she did not like it she could move to another apartment complex uptown. Mrs. Farris got very angry and hung up after Ms. Malek had questioned her about the fee.

48. The next morning, February 2, 2002, around 10:00 a.m. a letter was placed under Ms. Malek's door from Mrs. Farris stating:

"I have informed Housing and have given you a copy of the fax that was sent to them. Do (sic) to the fact that there is so much controversy on the new apartment with you we have rented it to someone else. We have tried to *accommodate* you but after the last conversation with you I can tell you will not be happy living here. So in best interest to all concern (sic) *your lease will not be renewed.*" (Emphasis added).

49. By noon on February 2, 2002, one of Mrs. Farris's employees who lived in the next building was moving into Unit #101.

50. On May 6, 2002, Ms. Malek attained a doctor's note from Doctor Egekeze which read:

"Joyce Malek has a right foot fracture and is unable to walk up and down flights of stairs. She needs to have a ground level apartment due to the condition of her lower legs (Neropathy)."

Dr. Egekeze recommended that Ms. Malek see Dr. Hall. Dr. Hall now says that the only way to repair Ms. Malek's deformed foot is by surgery.

51. Later in that same month, Ms. Malek received a letter from Dr. Robert Hall. The letter read, "Joyce Malek is being treated at my office. She will need a first floor apartment. Due to the possible nonunion of the fracture of her right foot. If you have any other questions please feel free to contact my office."

52. Shortly after, Ms. Malek gave the doctor's note from Dr. Egekeze and letter from Dr. Hall to Mrs. Farris.

53. Because Defendants would not renew Ms. Malek's lease and refused to move her to a first floor apartment, she moved out on June 1, 2002.

54. During the entire time Ms. Malek lived at Farris court apartments, Respondents continually failed to provide her a handicapped parking spot which she begged for, for two and half years.

CLAIMS

Count I

55. Plaintiffs repeat the allegations of paragraphs 1 through 54 as fully set forth herein.

56. Defendants failed to make reasonable accommodations for Ms. Malek's handicap in violation of 42 U.S.C. 3604 (f)(3)(B) because they never had given her the first floor apartment and they also failed to give her a handicap parking spot.

Count II

57. Plaintiffs repeat the allegations of paragraphs 1 through 56 as fully set forth herein.

58. Defendants violated 42 U.S.C. 3604 (f) (1) and (2) by denying her a first floor apartment and by not renewing her lease.

Count III

59. Plaintiffs repeat the allegations of paragraphs 1 through 58 as fully set forth herein.

60. By not renewing her lease, Defendants violated 42 U.S.C. 3617 by retaliating against Mrs. Farris for exercising her rights under The Fair Housing Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- a. Compensation for the emotional pain that Ms. Malek suffered as a result of being denied housing; and
- b. Compensation for the physical injuries that she suffered as a result of being denied housing;
- c. Punitive Damages;

- d. Attorney fees; and
- e. Any other relief to which she is entitled to under the law.


JURY DEMAND


Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby demand a trial by jury of all issues triable of right by jury.

Respectfully Submitted,

JOYCE MALEK

By:


One of Plaintiff's attorneys
Joseph R. Butler
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