

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
EASTERN DIVISION**

FAIR HOUSING RIGHTS CENTER IN
SOUTHEASTERN PENNSYLVANIA,

Plaintiff,

v.

MORGAN PROPERTIES MANAGEMENT
COMPANY, LLC; KBF ASSOCIATES,
L.P.; and MONTGOMERY WOODS
OWNER LLC,

Defendants.

Case No. 16-CV-4677-RBS

JURY DEMAND

FIRST AMENDED COMPLAINT

1. Defendant Morgan Properties Management Company, LLC (“Morgan”) -- a company that manages over 32,000 rental units in 120 complexes in 10 states -- maintains a blanket policy under which Morgan refuses to adjust the rent payment date for tenants with disabilities who receive Social Security Disability Insurance (“SSDI”) benefits later than the rent due date.

2. At least three Philadelphia-area Morgan properties apply this policy. Brookside Manor Apartments and Townhomes and Kingswood Apartments, owned by Defendant KBF Associates L.P. and managed by Morgan; and Montgomery Woods Townhomes, owned by Defendant Montgomery Woods Owner LLC and managed by Morgan.

3. On information and belief, the average monthly rent for a modest one-bedroom apartment in a Philadelphia-area Morgan property owned or operated by Defendants is \$1,200.

Defendants charge a 10% late fee—or \$120 per month on the average apartment—if rent is not paid by the 5th day of the month.

4. Beginning in 1997, for its own administrative convenience, the Social Security Administration adjusted SSDI monthly payment dates for all new beneficiaries, moving the receipt of monthly benefits checks from the third day of the month to the second Wednesday, third Wednesday or fourth Wednesday of the month, depending on the birth date of the recipient. *See Soc. Sec. Admin., Schedule of Social Security Benefit Payments 2016*, <https://www.ssa.gov/pubs/EN-05-10031.pdf>.

5. Inasmuch as the “second Wednesday” of the month can be no earlier than the 8th day of the month (and may be as late as the 14th day), every new SSDI recipient over the past 19 years can expect to receive a monthly check at least three days past the due date for Defendants’ properties.

6. The amount of SSDI benefits varies with contributions the worker made during his or her working life. As of June 2016, the average SSDI check to a disabled worker was \$1,166 per month. *See Soc. Sec. Admin. Monthly Statistical Snapshot, June 2016*, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/2016-06.pdf. More than 8 in 10 SSDI recipients rely on Social Security as their main source of income, and 3 in 10 depend on it as their sole source of income. *See Soc. Sec. Admin., No. 2014-02, Characteristics of Noninstitutionalized DI and SSI Program Participants, 2010 Update (2014)*.

7. More than 10 million Americans receive SSDI benefits, which provide monthly income to individuals with disabilities with work histories who are no longer able to engage in “substantial gainful activity, or to their spouses and minor children.”

8. Defendants' discriminatory actions were revealed through testing conducted by the Fair Housing Rights Center in Southeastern Pennsylvania ("FHRC") after the FHRC received a complaint regarding the denial of a reasonable accommodation by a resident at one of Defendants' properties. FHRC investigated three (3) properties: Brookside Manor Apartments and Townhomes, Kingswood Apartments, and Montgomery Woods Townhomes, all located in the Greater Philadelphia region. Each tester asked for a reasonable accommodation by adjusting the rent due date to coincide with receipt of a SSDI check of a prospective tenant. Each of the testers was told by an agent of Defendants that their refusal to grant a reasonable accommodation was a matter of Morgan's company-wide policy.

9. FHRC brings this civil rights action, pursuant to the federal Fair Housing Act and the Pennsylvania Human Relations Act, to challenge Defendants' unlawful policy, which has the purpose and effect of discriminating against residents with disabilities, imposing financial hardships on them because of their disabilities, and discouraging applicants with disabilities from applying to live in Defendants' properties.

10. Morgan is a large company engaged in interstate commerce, whose financial capacity provides it the wherewithal—without imposing undue financial and administrative burdens or constituting a fundamental alteration of its rental business—to grant requests to adjust rent due dates without assessing late fees to residents and applicants with disabilities who receive SSDI benefits after the 5th day of the month.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(4), and 28 U.S.C. § 1367.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in this District.

PARTIES

13. Plaintiff FHRC is a non-profit fair housing agency organized under the laws of the State of Pennsylvania with its principal place of business at 444 N. 3rd Street, Suite 110, Philadelphia, Pennsylvania 19123. FHRC works throughout Southeastern Pennsylvania in pursuit of its mission to ensure equal access to housing opportunities to all persons regardless of disability or other protected class under federal and state anti-discrimination laws.

14. FHRC provides innovative and effective services to the public for the prevention and elimination of housing discrimination. FHRC investigates claims of discrimination and monitors discriminatory housing practices and trends in the region, offers educational workshops and materials for home seekers, tenants, housing providers and advertisers on fair housing rights and responsibilities, and publishes a list of fair-market rentals in the Montgomery County area.

15. FHRC has been forced to divert its time and resources to identify and counteract Defendants' discriminatory acts described herein, resulting in the expenditure of time and resources that would otherwise have been used to engage in its typical activities to further its fair housing mission. Defendants' discrimination has further frustrated FHRC's mission of ending unlawful housing discrimination, and will require FHRC to undertake future measures to counteract the impression created by Defendants' policy that large rental housing providers can adopt blanket policies denying reasonable accommodations related to late payment of rent by SSDI recipients.

16. Defendant Morgan Properties Management Company, LLC is a real estate and management company that operates and manages Brookside Manor Apartments and

Townhomes, Kingswood Apartments, and Montgomery Woods Townhomes, all of which are located in the Philadelphia area. Morgan is incorporated in the state of Delaware and its registered agent is located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Morgan owns and manages more than 120 apartment complexes in ten states.

17. Defendant KBF Associates, L.P. (“KBF”) is a limited partnership registered in Delaware that owns Brookside Manor Apartments and Townhomes and Kingswood Apartments. KBF’s registered agent is located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

18. Defendant Montgomery Woods Owner LLC (“Montgomery Woods Owner”) is a limited liability company registered in Delaware that owns Montgomery Woods Townhomes. Montgomery Woods Owner’s registered agent is located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

19. Defendants Morgan, KBF, and Montgomery Woods Owner, including by and through their officers, employees, and/or agents, are responsible for the formulation and implementation of policies, practices, acts, and conduct with respect to all facets of the ownership and/or management of their properties.

FACTUAL BACKGROUND

20. SSDI benefits are provided by the federal government to individuals with disabilities who are no longer able to work. As of June 2016, the average SSDI check was \$1,166 per month. More than 8 in 10 SSDI recipients rely on Social Security as their main source of income, and 3 in 10 depend on it as their sole source of income.

21. SSDI beneficiaries often live benefit check to benefit check and do not have the financial flexibility to spend money on rent until their next SSDI check arrives. *See Soc. Sec.*

Admin., No. 2014-02, Characteristics of Noninstitutionalized DI and SSI Program Participants, 2010 Update (2014).

22. Checks are distributed to recipients on the second, third, or fourth Wednesday of the month depending on whether the recipient's birth date is between the 1st and the 10th, the 11th and the 20th, or the 21st and the 31st. *See Soc. Sec. Admin., Schedule of Social Security Benefit Payments 2016*, <https://www.ssa.gov/pubs/EN-05-10031.pdf>. For instance, SSDI beneficiaries born on the 8th receive their checks on the second Wednesday of every month.

23. Morgan manages over 32,000 rental units in 120 complexes in 10 states. In Pennsylvania alone, Morgan manages rental units in 22 properties. The company advertises itself as being "one of the nation's leading apartment management companies" and as "creating the standards that others have followed for many years." To the extent other management companies "follow" Morgan's policy of routinely refusing to adjust the rent due date for SSDI recipients, the harm caused by Morgan's policy is amplified.

24. Plaintiff FHRC's work includes assisting community members who have been subjected to unlawful housing discrimination, and in 2012 FHRC received a complaint from a resident at a Morgan property regarding disability discrimination.

25. The complainant lived at Brookside Manor, a property owned by KBF and operated by Morgan. The complainant was disabled and could not work because of a disability, and as a result relied on Social Security benefits to pay his rent. The rent at Brookside Manor was due on the first of the month, but because the complainant did not receive his Social Security income until after the first of the month, he had requested a reasonable accommodation from KBF and Morgan to change the due date of his rent. KBF and Morgan refused to make the

reasonable accommodation and refused to renew the complainant's lease for failure to pay late fees that accrued when he could not make his rent payment by the first of the month.

26. After receiving this complaint and discovering the discrimination occurring at Brookside Manor, FHRC launched an investigation to determine whether, and the extent to which, disability discrimination was occurring at properties managed by Morgan.

27. The investigation of Morgan included testing three of its communities in the Greater Philadelphia area, Brookside Manor Apartments and Townhomes, Kingswood Apartments, and Montgomery Woods Townhomes. The testing revealed that Defendants systematically and without engaging in any interactive process deny reasonable accommodation requests to adjust monthly rent due dates for tenants with SSDI income received after the 5th of each month.

28. On June 29, 2012, Tester One ("T1") placed a call to the Brookside Manor Apartments and Townhomes office and spoke to a woman who identified herself as Melissa. T1 explained to Melissa that she was calling on behalf of her sister, a prospective tenant, who has a disability and receives SSDI.

29. T1 said that her sister gets her SSDI check on the 15th of each month, and asked if her sister would be able to pay her rent on the 15th of the month since that is when she receives her check.

30. Melissa replied that rent is always due on the first of the month, that it is part of the company policy, and "fair housing," and that there were no exceptions to this rule.

31. Melissa further stated that a tenant who paid on the 15th of the month would have to pay court fees in addition to late fees, as Morgan and KBF would have begun court proceedings at that point.

32. On July 17, 2012, Tester Two (“T2”) placed a call to the Kingswood Apartments general line at 610-340-2728 and spoke to a woman who identified herself as Jewel.

33. Jewel quoted price ranges of \$805-\$1,200 for a studio apartment, and \$890-\$1,410 for a one-bedroom apartment. T2 explained to Jewel that she was looking for an apartment for her sister, that her sister had a disability, and that her main source of income was SSDI.

34. T2 asked when rent was due each month, and Jewel replied that she believed it was due on the first of the month. T2 asked if the rent due date could be flexible, as her sister’s monthly check arrived on the 15th of each month. Jewel replied that T2 would have to work out such details with the local Kingswood offices.

35. That same day, T2 called the local Kingswood offices and spoke with a woman who identified herself as Julie. Julie explained that T2 needed to speak to Diane in the fiscal department and transferred her to Diane’s line.

36. When Diane picked up, she said that rent is due on the first of the month with a five day grace period.

37. T2 asked if accommodations could be made, since her sister had no control over the SSDI check date due to her disability. Diane told T2 she would ask her manager and call her back.

38. That same day, Diane called T2 and said that in order for a renter to avoid late fees or collections, the renter would need to pay a month in advance.

39. On June 19, 2013, Tester Three (“T3”) placed a call to the Morgan Central Office and made an appointment to view a unit at the Montgomery Woods Townhomes.

40. On June 22, 2013, T3 arrived at the Montgomery Woods Townhomes and was greeted in the leasing office by a woman who identified herself as Casey.

41. Casey showed T3 a pamphlet with layouts for two units, the first of which was priced at \$1,090.00/month and the second of which was priced at \$1,250.00/month.

42. T3 told Casey that she was there on behalf of her sister. After viewing a model unit, T3 explained that her sister had a disability, was on SSDI, and received her SSDI check on the 15th of the month.

43. T3 asked Casey if it would be possible for her sister to pay her rent on the 15th day of the month instead of on the 1st day of the month.

44. Casey replied that she did not think it was possible, but that she would ask her boss.

45. On or around June 25, 2013, T3 called Casey to follow up on her question. Casey explained that they were unable to waive the due date, and that rent would be due on the 1st day of the month.

46. Each of the employees and/or representatives named in Paragraphs 28-38 was an agent of Morgan and KBF, acting within the scope of his or her authority to enforce Morgan and KBF's policies. Morgan and KBF directed, or acquiesced in, the enforcement of their policies and subsequently ratified the actions of its agents.

47. Each of the employees and/or representatives named in Paragraphs 39-45 was an agent of Morgan and Montgomery Woods Owner, acting within the scope of his or her authority to enforce Morgan and Montgomery Woods Owner's policies. Morgan and Montgomery Woods Owner directed, or acquiesced in, the enforcement of their policies and subsequently ratified the actions of its agents.

48. The testing and investigation conducted by the FHRC revealed Defendants' policy of refusing to make reasonable accommodations on the rent due date for tenants or prospective tenants whose incomes include SSDI benefits as a result of a disability.

49. As explained above, the Social Security Administration sets the date on which beneficiaries receive their checks. Since 1997, the earliest a new SSDI recipient can receive her benefits is the second Wednesday of the month, which can be no earlier than the 8th day of the month (if the first day of the month is a Wednesday) and may fall as late as the 14th day of the month (if the first day of the month is a Thursday).

50. Rent at Defendants' properties is due on the first of the month, with late fees accruing after the fifth of the month. Accordingly, any disabled tenant or prospective tenant who relies on SSDI benefits as her means of paying her rent and began receiving those benefits after 1996 will receive that check at least one week past the due date for Morgan properties and three days after late fees begin to be charged.

51. Defendants refuse to make a reasonable accommodation or engage in any interactive process for tenants and prospective tenants and insist that they must pay their rent on the first of the month. As a result, many of Defendants' tenants who rely on SSDI benefits to pay their rent will necessarily incur the 10% late fee and, if their birthday falls such that their check will arrive after the 15th of the month, will also incur court fees. This policy also has the effect of communicating to prospective tenants who rely on SSDI benefits to pay their rent that they should not even apply to live at a Morgan property as housing will not be made available to them.

52. The imposition of mandatory late fees and court fees and Defendants' failure to make reasonable accommodations impose a significant economic burden on Defendants' tenants

and prospective tenants because of their disability, and denies them an equal opportunity to live in and enjoy the benefits of Defendants' properties.

53. On July 15, 2013 the Board of Directors of the FHRC voted to file a complaint with the United States Department of Housing and Urban Development ("HUD") against Morgan for violations of the federal Fair Housing Act and the Pennsylvania Human Relations Act. The complaint was timely filed against Morgan Properties, Inc., KBF Associates, L.P., and First Montgomery Properties and was accepted by HUD on August 21, 2013.

54. HUD referred the FHRC's complaint to the Pennsylvania Human Relations Commission ("PHRC"). On September 29, 2015 the Commission issued a finding of Probable Cause that Morgan engaged in unlawful discriminatory conduct by failing to provide a reasonable accommodation. Since the finding of Probable Cause, the FHRC's complaint has not been resolved and no notice of hearing has been issued.

55. Throughout the Commission investigation, Morgan has acknowledged that it does not, and will not, provide an accommodation on the rent due date and any attendant fees for tenants or prospective tenants who rely on SSDI benefits to pay their rent.

56. Plaintiff FHRC's instant complaint is based on the same facts, allegations and actors as Plaintiff's PHRC complaint. Although the PHRC complaint names "Morgan Properties, Inc." and "First Montgomery Properties" as respondents, their correct legal names are those named in the instant complaint, "Morgan Properties Management Company, LLC" and "Montgomery Woods Owner, LLC" (Defendant KBF Associates, LP remains the same). Defendants, who referred to themselves and signed all documents as "Morgan Properties" in the PHRC proceedings are represented by the same counsel in federal court as in the PHRC proceeding.

57. Plaintiff FHRC's instant complaint is timely filed in this court as the time period for commencing a civil action does not include any time during which an administrative proceeding is pending. *See* 42 U.S.C. §3613(a)(1); 43 Pa. Stat. Ann. § 962(c).

INJURIES TO PLAINTIFF

58. Defendant's unlawful actions have frustrated FHRC's mission and forced FHRC to divert its resources from its typical activities, which include a range of educational, investigative, counseling, and referral services.

59. Instead of engaging in these usual activities, Defendants' unlawful housing practices forced FHRC to identify and counteract Defendant's discriminatory actions by, among other activities: investigating Defendants' discrimination; gathering and researching facts and applicable rules and regulations; designing, conducting, and analyzing the tests of Brookside Manor Apartments and Townhomes, Kingswood Apartments, and Montgomery Woods Townhomes; and engaging in outreach to the community, including the distribution of educational materials to tenants at the three communities tested by the FHRC, with the objective of informing them, among other things, that the Fair Housing Act requires housing providers to grant reasonable accommodations to individuals with disabilities.

60. FHRC has devoted time and resources, and incurred out-of-pocket expenses, related to its testing and educational efforts to offset the effect of Defendants' unlawful practices and actions. If Defendants had not engaged in this discrimination, FHRC would have spent those resources on other activities consonant with its mission, including: education to first time homebuyers regarding fair housing and fair lending; coordinating activities in Southeastern Pennsylvania to address predatory lending, financial steering, and mortgage rescue scams; training staff from the Mental Health Association of Southeastern PA, Philadelphia's Department

of Behavioral Health and Intellectual disAbility Services, and Veteran's Affairs to help consumers with reasonable accommodation requests; and investigating new multifamily properties for compliance with design and construction requirements and bringing enforcement actions where violations are found.

61. Defendants' unlawful actions have frustrated and continue to frustrate FHRC's mission to ensure equal access to housing opportunities to all persons. FHRC has made substantial efforts and expended considerable resources to ensure equal housing opportunities without regard to disability in its service area. Defendants' discriminatory practices have impaired and continue to impair FHRC's efforts to ensure equal housing opportunities without regard to disability and thereby frustrate its mission.

62. Plaintiff's injuries were caused by Defendants' discriminatory acts taken pursuant to Defendants' ongoing and continuous unlawful policies and practices that stand in violation of federal and state fair housing laws.

63. Unless enjoined, Defendants' will continue to engage in unlawful acts and maintain its discriminatory policies and practices. Plaintiff has no adequate remedy at law. Plaintiff is now suffering and will continue to suffer irreparable injury from Defendants' unlawful conduct, policies, and practices unless relief is provided by this Court.

CLAIMS FOR RELIEF

Count I

Violation of 42 U.S.C. § 3604(f)

64. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 62 above.

65. Defendants have discriminated by refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford equal opportunity for people with disabilities to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

66. Defendants have discriminated by making dwellings unavailable because of disability, in violation of 42 U.S.C. §3604(f)(1)(A).

67. Defendants' acts and conduct in violation of the Fair Housing Act caused Plaintiff's injury.

Count II

Violation of 43 Pa. Stat. Ann. § 955(h)(3.2)

68. Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 66 above.

69. Defendants have discriminated by refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford equal opportunity for people with disabilities to use and enjoy a housing accommodation, in violation of 43 Pa. Stat. Ann. § 955(h)(3.2).

70. Defendants have discriminated by denying or withholding housing because of disability, in violation of 43 Pa. Stat. Ann. §955(h)(1).

71. Defendants' acts and conduct in violation of 43 Pa. Stat. Ann. § 955(h)(3.2) caused Plaintiff's injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant them the following relief:

- A. Enter a declaratory judgment finding that the foregoing actions of Defendants violate the Fair Housing Act, 42 U.S.C. § 3604(f) and 43 Pa. Stat. Ann. § 955(h);
- B. Enter an injunction directing Defendants to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
- C. Award compensatory damages to Plaintiff FHRC in an amount to be determined by the jury that would fully compensate Plaintiff FHRC for its harm including, but not limited to, its diversion of resources and frustration of mission that it suffered and continues to suffer as a result of the conduct alleged herein;
- D. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. §§ 3613(c)(2) and 1988;
- E. Award Plaintiff reasonable attorneys' fees and costs pursuant to 43 Pa. Stat. Ann. § 959(d.1)(2); and
- F. Order such other relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs request trial by jury as to all issues in this case.

Dated: September 1, 2016

Respectfully submitted,

/s/ Tara K. Ramchandani
Tara K. Ramchandani (*pro hac vice to be filed*)
Michael Allen (*pro hac vice to be filed*)
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