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Complaint, Bernardi v. Lake County Housing Authority, Docket No. 1:09-cv-00628 (Northern District of Illinois Mar. 11, 2009) Edward A. Voci, John Marshall Law School and John Marshall Law School Fair Housing Legal Clinic

Edward A. Voci
John Marshall Law School

John Marshall Law School Fair Housing Legal Clinic

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

PIA BERNARDI, by her Guardian and)
Next Friend, GIOVANNA BERNARDI;)
and GIOVANNA BERNARDI,)

Plaintiffs,)

vs.)

LAKE COUNTY HOUSING)
AUTHORITY, A Municipal Corporation,)
and DAVID NORTHERN, in his official)
capacity as Executive Director of the Lake)
County Housing Authority,)

Defendants.)

RECEIVED: JANUARY 30, 2009
09CV628
JUDGE DER-YEGHIAYAN
MAGISTRATE JUDGE DENLOW
BR

No.

Judge:

COMPLAINT

Plaintiffs, PIA BERNARDI, a disabled individual by guardian and next friend, GIOVANNA BERNARDI, and GIOVANNA BERNARDI, by and through their attorneys, Edward Voci, Kelly J. Keating and the Senior Law Students of The John Marshall Law School Fair Housing Legal Clinic, and Lawrence W. Smith of Prairie State Legal Services, and complain as follows against Defendants, Lake County Housing Authority and David Northern in his official capacity as Executive Director of the Lake County Housing Authority.

JURISDICTION AND VENUE

1. This claim arises under 42 U.S.C. § 3601 et seq. of the Federal Fair Housing Act, section 504 of the Rehabilitation Act of 1973 and the Equal Protection Clause of the Fourteenth Amendment.
2. Federal jurisdiction is conferred on this Court under 42 U.S.C. § 3601, 42 U.S.C. § 3604, 28 U.S.C. 1331 and 28 U.S.C. 1343.

3. Additionally, section 3613 of the Fair Housing Act states, in pertinent part: “(a) An aggrieved person may commence a civil action in an appropriate United States District Court... (c) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) and without regard to the status of any such complaint...”
4. Venue is proper in the Northern District of Illinois, Eastern Division, as all Plaintiffs and all Defendants reside within the boundaries thereof.

PARTIES

5. Plaintiff PIA BERNARDI (“PIA”) is a senior citizen female with the disability of mental retardation that does not permit her to perform normal life functions. She is a participant in the federally funded “Section 8” Housing Voucher Program administered by Defendants. She resides in an apartment leased from Robin Miller and Bonita Miller.
6. GIOVANNA BERNARDI (“GIOVANNA”) is PIA’s sister and duly appointed legal guardian. She lives with PIA in the aforesaid apartment as a live-in aid giver for Pia.
7. Defendant LAKE COUNTY HOUSING AUTHORITY (“HOUSING AUTHORITY”) is a political subdivision of the State of Illinois and an administer of the “Section 8” Housing Choice Voucher Program for the U.S. Department of Housing and Urban Development (“HUD”). It maintains its offices and conducts its affairs in Lake County, Illinois. Within the HOUSING AUTHORITY’S range of responsibilities are payment of HUD funds to private landlords on behalf of “Section 8” participants, such as PIA, and the termination of “Section 8” Vouchers.

8. Defendant DAVID NORTHERN is the Executive Director of the Lake County Housing Authority and is responsible for the implementation of the policies, rules, and regulations of the HOUSING AUTHORITY and making final administrative decisions.

FACTS

9. GIOVANNA is PIA's younger sister. At all material times hereto, PIA is and has been disabled within the meaning of 20 C.F.R. § 404.1505, 42 U.S.C. § 3602 and the Rehabilitation Act of 1973.
10. PIA has been mentally disabled since age 3, when improper medical treatment caused her to lapse into a coma. After she emerged from the coma, she has not developed normally mentally or emotionally.
11. PIA cannot perform everyday tasks, such as dressing herself. Putting on clothes is a daily challenge for PIA, as she cannot put on a belt properly, coordinate articles of clothing or tie her own shoes. When unsupervised, she will walk with untied laces, which has caused her to trip. The inability to clothe herself presents challenges with adverse weather since PIA does not button up her coat, she is susceptible to cold temperatures. Rain, snow and ice frighten and confuse PIA, and she will refuse to leave the house unless GIOVANNA pulls the car right up to the door.
12. PIA cannot bathe herself completely without assistance. While PIA can wash her front, she needs assistance in shampooing her hair and washing her back, feet, legs and private area.
13. PIA also cannot cook meals for herself, do her own laundry, drive a car or manage her diabetes.

14. PIA is unable to adjust to emotional work stress or to get along with others outside her family. Various stimuli cause her have crying spells and temper tantrums. PIA has an IQ of 59 and cannot read or write anything beyond a few letters and numbers.
15. GIOVANNA became PIA's duly appointed legal guardian of the person and the estate in 1991.
16. PIA cannot care for herself, and so GIOVANNA provides the day-to-day care for PIA. PIA shares a residence with GIOVANNA forgoing full time employment, and is therefore PIA's live-in aide as defined in section 24 C.F.R. § 5.403.
17. In or about August 2003, GIOVANNA, as guardian for PIA, applied for "Section 8" funding assistance for PIA.
18. All times material hereto, the HOUSING AUTHORITY was legally responsible for administering the Housing Assistance Program in accordance with federal laws and guidelines.
19. At the outset of the application process, GIOVANNA informed the HOUSING AUTHORITY that PIA was disabled and unable to live without assistance, and that GIOVANNA was PIA's legal guardian.
20. HOUSING AUTHORITY stated to GIOVANNA that PIA qualified for "Section 8," but that she, GIOVANNA, did not qualify for "Section 8." Consequently, only PIA was included in the "Preapplication."
21. In November or December 2004, PIA was approved for "Section 8" assistance by HOUSING AUTHORITY and was scheduled for an interview.
22. At the interview, HOUSING AUTHORITY observed and questioned PIA to determine her ability to live independently. HOUSING AUTHORITY stated to GIOVANNA that "it is

obvious that you are a part of her.” HOUSING AUTHORITY inquired if, GIOVANNA would live alone but for caring for PIA, and GIOVANNA answered in the affirmative.

Consequently, GIOVANNA included herself in the “Personal Declaration” along with PIA as her “Guardian.”

23. HOUSING AUTHORITY then informed GIOVANNA that she and PIA qualified for a two-bedroom apartment and handed GIOVANNA a list of available two-bedroom apartments.

24. Bonnie and Robin Miller’s’ apartment was on the list given to GIOVANNA by HOUSING AUTHORITY. GIOVANNA and PIA subsequently entered into their lease with the Millers for Apartment 221 at 10 Lake Street in Grayslake, IL, which began on or about June 15, 2005.

25. As part of the “Section 8” Housing Program, HOUSING AUTHORITY recertifies the qualifications of “Section 8” participants. During HOUSING AUTHORITY’s recertification of PIA’s eligibility, GIOVANNA volunteered information that she worked sporadically during 2005 and 2006.

26. On June 29, 2006, HOUSING AUTHORITY sent a letter to PIA stating that they were calculating GIOVANNA’s income into the amount of benefits PIA would be receiving. HOUSING AUTHORITY did this contrary to 24 C.F.R. 5.609(e)(5).

27. Due to GIOVANNA’s voluntary acknowledgement of receiving income, the HOUSING AUTHORITY demanded repayment of the alleged overpayments. There ensued hearings, negotiations and agreements, which ultimately resulted in an agreement to repay what Defendants claimed was owed to it by PIA and GIOVANNA, which PIA and GIOVANNA only agreed to in order to forego the termination of PIA’s benefits and immediate removal from the apartment. Before, during and after said repayment agreement was entered into,

Plaintiffs' counsel at Prairie State Legal Services made numerous and repeated requests for reasonable accommodations that GIOVANNA be classified as a live-in aide under 24 C.F.R. 5.403, which would have excluded GIOVANNA's income as PIA's live-in aide.

28. A live-in caretaker is defined by Lake County Housing Authority's Administrative Plan (page 107) and HUD regulation (24 C.F.R. § 5.403, C.F.R. § 5.609 (ec)(5)) as, "a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) Is determined to be essential to the care and well-being of the persons; (2) Is not obligated for the support of the persons; and (3) Would not be living in the unit except to provide the necessary supportive services."
29. Pursuant to 24 C.F.R. § 5.609, the income of the live-in caretaker is not included in the household income and does not affect the amount of "Section 8" funding PIA would receive. HOUSING AUTHORITY denied this reasonable accommodation and did not offer any alternatives to their decision.
30. On or about November 2008, GIOVANNA and PIA filed a discrimination complaint with the U.S. Department of HUD.
31. On or about January 21, 2009, HOUSING AUTHORITY notified the Plaintiffs' landlords that the HAP contract between HOUSING AUTHORITY and the landlords would be terminated effective as of Saturday, January 31, 2009.
32. The termination of the contract will in effect terminate the lease between the landlords and PIA and GIOVANNA.
33. Without these benefits, GIOVANNA and PIA will be forced from their current apartment, and as a result, PIA will need to be institutionalized, as she cannot live without assistance.

CLAIMS

Claim 1

Violation of the Federal Fair Housing Act

Plaintiffs PIA and GIOVANNA restate and reallege Paragraphs 1 through 33 of the Facts.

34. The Lake County Housing Authority violated section 3604(f)(3)(b) of the Federal Fair Housing Act by failing to grant PIA and GIOVANNA's requests for a reasonable accommodation for GIOVANNA to be classified as PIA's live-in aide under 24 C.F.R. § 5.403.
35. Granting such a request would neither result in undue financial or administrative burdens for the Lake County Housing Authority.
36. Defendants' actions will proximately cause immediate and irreparable harm to Plaintiffs and has proximately caused emotional and mental injury to Plaintiffs.

Relief

PLAINTIFFS request that:

- (A) The Court enter an Order declaring that the Defendants, Lake County Housing Authority and David Northern as Executive Director of the Lake County Housing Authority, violated section 3604(f)(3)(b) of the Federal Fair Housing Act;
- (B) The Court enter an Order directing Defendants to grant PIA a reasonable accommodation that classifies Giovanna Bernardi as a live-in aide under 24 C.F.R. § 5.403;
- (C) The Court enter an Order enjoining the Defendants, their agents, employees, successors, and assigns from terminating Pia Bernardi's "Section 8" rental assistance;
- (D) The Court award Plaintiffs compensatory damages; and
- (E) The Court award Plaintiffs their attorney fees and costs.

Claim 2

Violation of the Rehabilitation Act of 1973

Plaintiffs PIA and GIOVANNA restate and reallege Paragraphs 1 through 33 of the Facts.

37. The Lake County Housing Authority violated section 504 of the Rehabilitation Act of 1973 by failing to grant PIA's requests for a reasonable accommodation for GIOVANNA to be classified as PIA's live-in aide under 24 C.F.R. § 5.403.
38. Granting such a request would neither result in undue financial or administrative burdens for the Lake County Housing Authority.
39. Defendants' actions will proximately cause irreparable harm to Plaintiffs and has proximately caused emotional and mental injury to Plaintiffs.

Relief

PLAINTIFFS request that:

- (A) The Court enter an Order declaring that the Defendants, Lake County Housing Authority and David Northern as Executive Director of the Lake County Housing Authority, violated the Rehabilitation of 1973;
- (B) The Court enter an Order directing Defendants to grant PIA a reasonable accommodation that classifies Giovanna Bernardi as a live-in aide under 24 C.F.R. § 5.403;
- (C) The Court enter an Order enjoining the Defendants, their agents, employees, successors, and assigns from terminating Pia Bernardi's "Section 8" rental assistance;
- (D) The Court award Plaintiffs compensatory damages; and
- (E) The Court award Plaintiffs their attorney fees and costs.

Claim 3

Class-of-One Claim under the Equal Protection Clause of the Fourteenth Amendment

Plaintiffs PIA and GIOVANNA restate and reallege Paragraphs 1 through 33 of the Facts.

40. A class-of-one action asserted under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution is recognized where a plaintiff alleges that (s)he has been intentionally treated differently from others similarly situated, and that there is no rational basis for the difference in treatment. Village of Willowbrook v. Olech, 528 U.S. 562 at 564 (2000).
41. Defendants do not terminate people with disabilities from rental assistance who have professional care givers, but will terminate caregivers who are family members, and thus, are intentionally treating Plaintiffs, GIOVANNA and PIA, differently than people in similar circumstances with no rational basis for the disparate treatment.

Relief

PLAINTIFFS request that:

- (A) The Court enter an Order declaring that the Defendants, Lake County Housing Authority and David Northern as Executive Director of the Lake County Housing Authority, violated the Fourteenth Amendment Equal Protection Clause.
- (B) The Court enter an Order directing Defendants to grant PIA a reasonable accommodation that classifies Giovanna Bernardi as a live-in aide under 24 C.F.R. § 5.403;
- (C) The Court enter an Order enjoining the Defendants, their agents, employees, successors, and assigns from terminating Pia Bernardi's "Section 8" rental assistance;
- (D) The Court award Plaintiffs compensatory damages; and
- (E) The Court award plaintiffs their attorney fees and costs.

Claim 4

Violation of Section 3617 of the Federal Fair Housing Act

Plaintiffs PIA and GIOVANNA restate and reallege Paragraphs 1 through 33 of the Facts.

42. The Defendants violated section 3617 of the Federal Fair Housing Act when they notified Plaintiffs' landlords, the Millers, that the contract between HOUSING AUTHORITY and the Millers would be terminated effective as of Saturday, January 31, 2009, in effect terminating the lease between the Plaintiffs and the Millers.
43. That Defendants' termination of PIA's benefits was in retaliation of the Plaintiffs PIA and GIOVANNA filing a discrimination complaint with the U.S. Department of Housing in November 2008.

Relief

PLAINTIFFS request that:

- (A) The Court enter an Order declaring that the Defendants, Lake County Housing Authority and David Northern as Executive Director of the Lake County Housing Authority, violated the Federal Fair Housing Act;
- (B) The Court enter an Order directing Defendants to grant PIA a reasonable accommodation that classifies Giovanna Bernardi as a live-in aide under 24 C.F.R. § 5.403;
- (C) The Court enter an Order enjoining the Defendants, their agents, employees, successors, and assigns from terminating Pia Bernardi's "Section 8" rental assistance;
- (D) The Court award Plaintiffs compensatory and punitive damages; and

(E) The Court award Plaintiffs their attorney fees and costs.

Respectfully Submitted,

/s/ Edward Voci

Atty. Edward Voci

/s/ Kelly Keating

Atty. Kelly Keating

The John Marshall Law School
Fair Housing Legal Clinic
55 E. Jackson Blvd., Suite 1020
Chicago, IL 60604
Telephone (312) 786-2267
Facsimile (312) 786-1047

Lawrence W. Smith
Prairie State Legal Services
325 W. Washington St., Suite 100
Waukegan, IL 60085
Telephone (847) 662-6925
Facsimile (847) 662-6986