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2001

Complaint, Piotter v. Incopero, Docket No.
1:01-cv-01434 (Northern District of Illinois Feb
28, 2001)

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John Marshall Law School Fair Housing Legal Clinic

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

DOCKETED
MAR 3 - 2001

JOHN PIOTTER, FRANK PIOTTER,
JEANNETTE BURITZ, and DENNIS BURITZ

01C 1434

Plaintiffs,

JUDGE RONALD GUZMAN

Case No.

v.

Judge

MAGISTRATE JUDGE ROSEMOND

VINCENT J. INCOPERO and
SUBURBAN BANK & TRUST COMPANY
TR #8-9973

Defendants.

FILED-ED4
MAR 28 PM 3:39
U.S. DISTRICT COURT

COMPLAINT

NOW COME the Plaintiffs, JEANNETTE BURITZ, DENNIS BURITZ, JOHN PIOTTER, and FRANK PIOTTER, by their attorney Joseph R. Butler, and Teresa Faherty, Senior Law Student, and THE JOHN MARSHALL LAW SCHOOL FAIR HOUSING LEGAL CLINIC, and complain of Defendants VINCENT J. INCOPERO and SUBURBAN BANK & TRUST COMPANY TR #8-9973, for discriminating against them on the basis of disability in violation of the Fair Housing Act.

NATURE OF CASE

1. This Complaint arises out of a series of discriminatory actions taken by Defendants to evict two disabled persons from the home in which they have lived virtually all their lives. Defendants have sought to remove and/or evict the tenants because of their disabilities by contacting various agencies in an attempt to have them

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involuntarily committed to a hospital; served them with improper eviction notices; and continually harassed and intimidated them in an effort to get them to move out. Defendants have made facially discriminatory statements about certain Plaintiffs' disabilities, in many cases referring to them as "retardos" and "retards." Defendants have repeatedly interfered with Plaintiffs' enjoyment of the premises by continually calling them and trying to gain entrance to their home in an effort to have them removed. Defendants have failed to make reasonable accommodations for certain plaintiffs' disabilities.

JURISDICTION AND VENUE

2. Federal jurisdiction is proper under 42 U.S.C. sec. 3613; 28 U.S.C. 1342; and 28 U.S.C. 1331.
3. Venue is proper in this district because the property in question is located in Forest Park, Illinois and because all of the defendants reside in this district.

PARTIES

4. Plaintiff JOHN PIOTTER ("John") is a male person with a disability and a legal occupant of 428 Elgin in Forest Park, Illinois ("the Elgin house"). John Piotter is a mentally and physically disabled Vietnam veteran who receives SSI Disability. John has been diagnosed with Wernicke-Korsakoff Syndrom and Alcoholic Neuropathy; he also takes medication for seizures. Because of the neuropathy in one of his legs, John walks with a cane.
5. Plaintiff FRANK PIOTTER ("Frank") is a male person with a disability and a legal occupant of the Elgin house. He is the brother of John. Frank suffers from

depression, anxiety and a heart condition, and has not worked for 9 years. Frank Piotter is currently applying for SSI.

6. Plaintiff JEANNETTE BURITZ ("Jeannette") is the sister of John and Frank and also is the leaseholder of the Elgin property where her disabled brothers are tenants. Jeannette Buritz resides in Bartlett, Illinois.

7. Plaintiff DENNIS BURITZ ("Dennis") is Jeannette's husband, and the brother-in-law of John and Frank. Dennis resides with Jeannette at 1176 Pinetree Lane, Bartlett, Illinois.

8. Defendant SUBURBAN BANK & TRUST COMPANY ("the Trust") is the title holder of the Elgin house.

9. Defendant VINCENT J. INCOPERO ("Incopero"), residing at 5906 W. Elm Ave., Berkeley, Illinois, is the sole beneficiary of the Trust, and Manager of the Elgin house.

FACTS

10. On or about February 21, 1996, Hannah Piotter conveyed title to a parcel of land in Forest Park, Illinois, along with two buildings on the parcel, to her daughter Jeannette and to her son-in-law Dennis, in joint tenancy.

11. The two properties on the parcel of land conveyed by Hannah Piotter to Jeannette and Dennis were a house located at 425 Harlem Avenue, and the Elgin house. The houses were built by Hannah Piotter's late husband and she and her husband had raised John, Frank, and Jeannette in the Elgin house. Hannah and her sons were still living in the Elgin house at the time of the conveyance. Hannah Piotter died on November 1, 1996.

12. On or about May 3, 2000, my Jeannette and Dennis executed a contract for sale of the parcel with Incopero. The contract contained a Rider, which stated in relevant part,

3A: Tenant arrangements 428 Elgin Avenue. Buyer agrees to let current tenants live for the duration of his life (sic) at 428 Elgin Avenue, Forest Park, for \$50/month. Tenant agrees to pay all utilities and to remove items and car from garage on Harlem Ave. This shall constitute a live (sic) estate for tenant in the event the property is sold.

13. On or about October 20, 2000, Jeannette and Dennis sold the parcel with both properties "as is" to Incopero at a below market price of \$75,000.00.

14. At the time of the closing, and as a condition to the sale, Jeannette, Dennis and Incopero all signed a residential lease and a rider calling for a rental rate set at fifty dollars (\$50.00) per month for the Elgin house, naming Jeannette as legal tenant and John and Frank as "occupants."

15. The rider to the lease contained a provision for termination:

Termination of Lease: It is agreed that, notwithstanding anything to the contrary stated in the said Lease, it will be terminated prior to the expiration of the stated term in the following instances:

- (a) In the event that the Occupants vacate the premises.
- (b) Upon the death of the last surviving occupant.
- (c) Upon 60 days written notice from the Lessor that he has obtained other housing for the said Occupants which housing shall be at least comparable in quality to the demised premises, and which shall create monthly rent liability no greater than under present lease.
- (d) Upon written termination by the parties hereto (without the consent of the Occupants).

16. Prior to October 20, 2000, and continuing to the present time, John and Frank have resided continually in the Elgin house. John, age 53, has resided there for approximately 20 years; Frank, age 46, has lived his entire life at the Elgin house.

17. On information and belief, beginning on or before November 2, 2001, Incopero on numerous occasions contacted ProCare Centers in an attempt to have the brothers assessed for the purpose of involuntary committing them to a psychiatric institution. This was done without the knowledge of John, Frank, Jeannette or Dennis.

18. On information and belief, Incopero represented to ProCare that the house was condemned, and that he feared John and Frank would become homeless because of their mental disabilities. Incopero suggested that he was the only one looking out for the brothers best interest, and that their sister was evil. None of these representations were true, except for the fact that John and Frank are disabled.

19. On information and belief, on or about November 7, 2000, Forest Park Police Social Worker Pamela Clark met with John and Frank in the Elgin house and although she noted the unpleasant odor of cat urine in the house, a result of the brothers previously having kept a large number of cats; (currently they have one), she assessed that the brothers were not candidates for involuntary commitment to a psychiatric institution.

20. On information and belief, between October 20, and November 9, 2001, Incopero attempted to arrange for other social workers to visit the brothers for the purpose of assessing them for involuntary commitment to a psychiatric institution, without the knowledge of John, Frank, Jeannette or Dennis.

21. At some point in December, John and Frank became increasingly reluctant to answer the door or telephone out of fear it was Incopero, who was verbally abusive to them when he came by their home.

22. On or about December 27, 2000, Incopero mailed a postcard to John and Frank which stated as follows:

John & Frank I have driven to your house 3 times in the past 6 wks t ask you to answer your phone and your front door. You have refused to answered [sic] your phone. I called 2X a day for 30 days. I sent 5 agents for you to help to you, [sic] & social workers to help find you a new residence You would not answer your phone or front door. I don't know how to get you to respond. This house is mine not yours. [emphasis in original] You refuse to cooperate. This is a 30 day Notice for you (2) [sic] to vacate the Premises. Please be out by Feb 1/01. [s/V. Incopero] 12-27-00. Notice to vacate 30 days.

23. On or about January 13, 2000, Incopero telephoned Jeannette and called John and Frank "stupid children and retards."

24. On or about January 26, 2001, Jeannette received a notarized handwritten eviction notice from Incopero, which Porported to be a notice of termination of tenancy which stated as follows:

John Piotter Frank Piotter Jeanette Buritz 428 Elgin Ave. Forest Park, IL 60130 This is 30 day notice of eviction. Due to non compliance of the terms of the Lease agreement. Please vacate the premises known as 428 Elgin Ave. Forest Park, Illinois by Feb 28, 2001. Thankyou [s/Vincent Incopero] Jan. 25, 2001 [sic]

25. On or about January 29, 2001, Incopero went to the Elgin house while John and Frank were at home. John went outside and stood on the front steps. Incopero asked him "why's your phone off the hook?" John answered to the effect that he and his brother were attempting to avoid contact with Incopero because of his abusive treatment.

26. During his January 29, 2001 visit to the Elgin house, Incopero grew enraged and shouted at John so angrily and loudly that a neighbor came out of his house and asked John if he needed help.

27. On or about February 5, 2001, Jeannette's attorney wrote to Incopero informing him that the brothers were protected by fair housing laws, and provided him

with the name and telephone number of another attorney, Peter Tumminaro, who would represent Jeannette in the event of litigation over the eviction attempts.

28. On or about February 5, 2001, Tumminaro received a telephone message from Incopero to whom he had never spoken before.

29. On or about February 5, 2001, Tumminaro returned Incopero's telephone. In the course of the conversation about John and Frank Piotter, Incupero stated to Tumminaro: "I want those guys out of there." Incopero also stated: "They're pigs, their slobs, they're a couple of retardos."

30. In the course of the February 5, 2001 telephone conversation, Incupero several times referred to John and Frank Piotter as "retardos."

31. When Tumminaro attempted to inform Incopero that his insulting verbal characterization of the John and Frank was inadvisable in the light of housing laws, and that he should probably retain a lawyer to represent him in this matter, he responded, "I don't need no fucking lawyer telling me what to do. I can evict those guys. This is Landlord-Tenant 101. I can do this in my sleep."

32. On or about February 13, 2001, Incopero telephoned Tumminaro a second time. During the telephone conversation, Incopero said of John and Frank, "I'm going to throw their fucking pig asses out on the street."

33. On or about February 27, 2000, Incopero called Jeannette and left a voice message that stated, "Jeannette, Vincent Incopero. 780-202-1949. I'm doing this as a courtesy call. What do you want to do now? Do you guys want to negotiate it out? If you don't, I want to know today because I'm going to file tomorrow."

a. CAUSES OF ACTION

34. Plaintiffs reallege and incorporate by reference paragraphs 3 through 35 of the complaint as of set forth fully herein.

35. Defendants have injured plaintiffs in violation of the federal Fair Housing Act by committing the following discriminatory housing practices:

36. Defendants discriminated against named Plaintiffs in violation of 42 U.S.C. 3604(c) which makes it unlawful to make print or public any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on handicap, or an intention to make any such preference, limitation or discrimination.

37. Defendants discriminated against named Plaintiffs in violation of 42 U.S.C. 3604(f)(1) which makes it unlawful to discriminate in the rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, [or] a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available;

38. Defendants discriminated against named Plaintiffs in violation of 42 U.S.C. 3604(f)(2) which makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of a person residing in or intending to reside in that dwelling after it is so sold, rented or made available.

39. Defendants discriminated against named Plaintiffs in violation of 42 U.S.C. 3604(f)(3)(B) which makes it unlawful to discriminate against any handicapped person by refusing to make reasonable accommodations in rules, policies, practices or services,

when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

40. Defendants discriminated against named Plaintiffs in violation of 42 U.S.C. 3617 which makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this subchapter.

41. As a direct result of defendants' action, Plaintiffs suffered and continuing to suffer great loss and injury, including inconvenience, mental anguish, humiliation and embarrassment, and loss of their right to be free from housing discrimination based on handicap.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

42. That the Court enter a declaratory judgment finding that the defendants violated 42 U.S.C. 3604(c), 42 U.S.C. 3604(f)(1), 42 U.S.C. 3604(f)(2), 42 U.S.C. 3604(f)(3)(B), and 42 U.S.C. 3617;

43. That the Court enter Orders temporarily and preliminarily enjoining and restraining defendants their agents, servants, employees, attorneys and all persons in active concert or participation with them from:

- a. taking any action to have plaintiffs vacate the premises at 428 Elgin, Forest Park, Illinois;
- b. taking any action to terminate the lease agreement signed by the Jeannette Burritz, Dennis Buritz and Vincent Incopero on October 20, 2000;

- c. taking any action to sell or lease the premises at 428 Elgin, Forest Park, Illinois; and
- d. having any contact with John Piotter and Frank Piotter except through their attorneys;

44. That the Court declare that plaintiffs are legally entitled to continue their residency at the property located at 428 Elgin Avenue, Forest Park, Illinois;

45. That the Court grant actual damages and punitive damages to the plaintiffs;

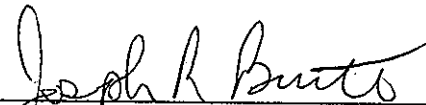
46. That the Court grant the plaintiffs reasonable attorney fees and costs; and

47. That the Court grant such additional and further relief as may be just and proper.

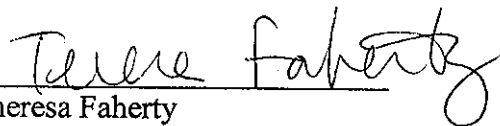
VI. JURY DEMAND

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

Respectfully Submitted,



 One of Plaintiff's attorneys
 Joseph R. Butler



 Theresa Faherty
 Senior Law Student

The John Marshall Law School Fair Housing Legal Clinic
 28 E. Jackson Blvd., Suite 500
 Chicago, IL 60604
 6226654

010 1434

JS 44 (Rev. 12/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

JUDGE RONALD GUZMAN

I. (a) PLAINTIFFS

John Potter Frank Potter
Jeannette Buritz Annis Buritz

DEFENDANTS

Vincent Incopero
Suburban Bank + Trust TR #89973

MAGISTRATE JUDGE ROSEMOND Cook

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT

DOCKETED

MAR 3 - 2001

FILED
FEB 28 2001
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) Cook

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Joseph R Butler
200 E Jackson St 500
Chicago IL 60604

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN

- Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input checked="" type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Fair Housing act 42 USC 3601 et seq

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. This case

- is not a refiling of a previously dismissed action.
- is a refiling of case number _____ previously dismissed by Judge _____

DATE 2/28/01

SIGNATURE OF ATTORNEY OF RECORD

Joseph R Butler

1-2

