



October 9, 2018

Via Certified Mail and Email

Regional Administrator Joseph J. DeFelice
Philadelphia Regional Office of FHEO
U.S. Department of Housing and Urban Development
100 Penn Square East, 12th Floor
Philadelphia, Pennsylvania 19107
ComplaintsOffice03@hud.gov

RE: Fredericksburg, Virginia Fair Housing Violation

Dear Mr. DeFelice,

First Liberty Institute represents Kenneth and Liv Hauge in connection with this Fair Housing complaint, which is made pursuant to 42 U.S.C. § 3610(a)(1) and 24 C.F.R. § 103.10, against The Evergreens at Smith Run (“Evergreens”), a 55+ apartment complex located in Fredericksburg, Virginia, and its parent company, Community Realty Company (“CRC”), located in Silver Spring, Maryland. Please direct all future correspondence related to this matter to my attention.

It is our understanding that Evergreens and CRC are represented by Joshua Greenberg, an attorney at Greenstein, DeLorme & Luchs, P.C. His contact information, along with that of our clients, Evergreens, and CRC, is attached as Exhibit A.

Ken Hauge, a retired minister, received a Notice from Evergreens and CRC threatening to evict him and his wife from their apartment at Evergreens if he continues to lead a weekly resident Bible study in Evergreens’ Community Room or in his apartment. The Notice follows repeated religious discrimination by Evergreens management, including forcing Hauge to refer to the Bible Study as a “Book Review,” penalizing and prohibiting residents from audibly saying grace at resident social dinners, and adopting a policy prohibiting residents from engaging in religious activity in Evergreens’ Community Room.

Background

The Hauges have resided at Evergreens since January 2017. Hauge is a retired Lutheran minister who serves part-time pastoring a small church in Fredericksburg, Virginia. In early 2017 at other residents’ request, Hauge began leading a nondenominational Bible study for interested Evergreens residents on Wednesday evenings, initially in an apartment and eventually in the Evergreens Community Room. Hauge lead the Bible study in his personal capacity, and the Bible study was not affiliated with his church.

Prior to holding the first meeting, Hauge contacted Evergreens' manager [REDACTED] and requested to reserve the Community Room for the activity. The Community Room is available for residents to use for a variety of events and activities, such as birthday and anniversary parties, card games, knitting circle, and resident socials. Evergreens also allows the [REDACTED], an outside local civic organization, to hold its monthly meetings in the Community Room.¹ Upon information and belief, residents may request to reserve the Community Room in what appear to be one of two ways: either 1) for a private party, which requires a \$100 deposit, or 2) for a resident activity, which does not require a deposit.² Once Evergreens management approves the request, it is placed on the bimonthly resident calendar. [REDACTED] classified Hauge's request as a private party, and he provided the required deposit. However, the weekly reservation was canceled due to a misunderstanding. As an alternative, one of the Bible study attendees volunteered to host the Bible study in her apartment, where it met for the remainder of 2017.

During that time, Hauge posted flyers announcing the Bible study on Evergreens' bulletin boards. Evergreens provides bulletin boards in the building's hallways for residents to post various informational flyers with management approval. While [REDACTED] approved Hauge's flyer announcing each Bible Study meeting, she insisted on removing reference to the group's religious nature—requiring that the flyer denominate the Bible study as a “Book Review” instead.³

Indeed, throughout 2017, Evergreens established a long record of obstructing and stifling residents' religious beliefs. On one occasion, [REDACTED] refused to reimburse the volunteer resident activity director for an agreed-upon portion of expenses for a social dinner because a resident briefly and audibly said grace over the meal. Similarly, at the 2017 Thanksgiving dinner social, residents were prohibited from saying an audible prayer over the meal.

[REDACTED] finally allowed the Bible study to meet in the Community Room in early 2018 and scheduled the Bible study on the January-February bimonthly calendar as a “Private Party.” However, [REDACTED] did not require Hauge to provide a deposit. In February 2018, a friend of another resident contacted CRC regarding Evergreens' pattern of religious discrimination. Shortly thereafter, Evergreens withdrew its insistence that Hauge conceal the Bible study's religious nature. Accordingly, the March-April resident calendar and Hauge's flyers properly entitled the event “Bible Study.” However, Evergreens went out of its way to designate the Bible study as a resident-sponsored event for which Evergreens management was not responsible, for the first time coding each event on the calendar as either resident-sponsored or Evergreens-sponsored.⁴

¹ Upon information and belief, the Evergreens has permitted the [REDACTED] to host its monthly meetings on the fourth Wednesday of each month (excluding summers) for at least a year, notwithstanding that its membership is comprised almost entirely of nonresidents. Additional information about the [REDACTED] is available here [REDACTED].

² Evergreens does not appear to define clearly the distinction between reservations requiring deposits and reservations not requiring deposits.

³ These flyers included the date and time of each Bible study meeting, as well as the material to be covered. On several occasions, other Evergreens residents removed the Bible study notices. Although this behavior persisted throughout 2017, [REDACTED] did not respond to Hauge's complaints. Management eventually installed locked glass cases to protect the bulletin boards in 2018.

⁴ Copies of the relevant calendars are available upon request.

The Bible study continued to meet in the Community Room during the first half of 2018. As always, the Bible study was nondenominational, open to any resident who wished to attend, and the decisions of those who did not wish to attend were respected. Even so, several Evergreens residents attempted to interfere with the Bible study on several occasions. At least one of these residents harassed and verbally abused Hauge and other Bible study attendees on the basis of their religious beliefs and practice. For example, this individual has confronted Hauge in the hallway and subjected him to profane rants concerning the Bible study. Similarly, some residents have attempted to disrupt Bible study meetings by causing noise in the Community Room. Other Bible study attendees have received disparaging comments concerning their religious beliefs while encountering these individuals in the hallways. Bible Study attendees felt intimidated by this behavior, concerned that they might similarly be confronted in the hallway and subjected to profane rants and disparaging comments. However, Hauge and the Bible study attendees graciously endured this ill-treatment and always respected others' Community Room usage.

On July 23, 2018, Evergreens residents, including the Hagues, unexpectedly received a new Community Room Usage Policy ("Policy"), attached as Exhibit B. The lengthy Policy prohibits residents from using the Community Room "for religious services or for other religious purposes." On that same day, the Hagues received a "Notice to Cure Default or Quit" ("Notice") signed by [REDACTED], which is attached as Exhibit C. The Notice threatened to terminate the Hagues' lease and evict them unless Hauge stopped leading the Bible study entirely, either in his private apartment or in the Community Room. *See* Exhibit C at page 2, para. 4, subsection (d). The Notice mischaracterized the Bible study as a business activity and asserted multiple erroneous and false allegations, none of which Evergreens or CRC attempted to address or confirm with Hauge prior to issuing the Notice.

On August 16, 2018, First Liberty sent a letter to the CRC and Evergreens, through their attorney, correcting the Notice's false allegations, explaining their obligations under the Fair Housing Act, and requesting that they withdraw the Notice and Policy. A copy of that letter is attached as Exhibit D. To date, CRC and Evergreens have failed to respond.

Legal Analysis

CRC and Evergreens' actions violate the Fair Housing Act ("FHA") and its accompanying regulations. *See* 42 U.S.C. § 3604(a), (b); 24 C.F.R. § 100.65. The FHA not only regulates the landlord's behavior when leasing a dwelling and providing the facilities connected with it, *see* 42 U.S.C. § 3604(b) (prohibiting discrimination "against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion"); 24 C.F.R. § 100.65 ("It shall be unlawful, because of . . . religion . . . , to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling."), but the FHA also regulates the landlord's behavior in terminating or failing to renew leases, *see* 42 U.S.C. § 3604(a) (making unlawful "[t]o refuse to sell or rent . . . , or otherwise make unavailable or deny, a dwelling to any person because of . . . religion"); *Betsey v. Turtle Creek Assocs.*, 736 F.3d 983, 985 (4th Cir. 1984); *Matarese v. Archstone Pentagon City*, 795 F. Supp. 2d 402, 425, 431 (E.D.Va. May 31, 2011) (affirmed in part and reversed in part on other grounds *sub nom* *Matarese v. Archstone Cmtys., LLC.*, 468 F. App'x 283, 284 (4th Cir. 2012) (per

curiam)); *see also United States v. S. Mgmt. Corp.*, 955 F.2d 914, 921 (4th Cir. 1992). A landlord's housing practice may violate these provisions if the practice: 1) is motivated by discriminatory intent; 2) has a discriminatory impact; or 3) both. *See Betsey*, 736 F.3d at 986. The totality of CRC and Evergreens' treatment of the Hauges, the Notice, and the Policy manifest both discriminatory intent and discriminatory impact relating to the Hauges' continued rental of a dwelling and access to the common facilities related to it, thus violating the FHA's prohibitions against religious discrimination in housing.

First, as described above, Evergreens has established a long history of treating residents, including the Hauges, discriminatorily because of their religion. Throughout 2017, it enforced an unwritten policy excluding residents' religious speech or expression from the common areas Evergreens provides residents incident to their leases.⁵ Evergreens management withheld its agreed-upon contribution to a resident social dinner from a resident who volunteers as an activity director because the management learned that Hauge had, upon request from others, offered a brief prayer blessing the meal. At the following social dinner—a Thanksgiving meal—residents were prohibited from audibly praying over the meal. Likewise, throughout 2017, Evergreens management insisted that Hauge's flyers describe the Bible study as a "Book Review" before it would allow him to post them on the bulletin boards. In sum, Evergreens expected religious residents to omit religious practices, such as prayer, in public areas of Evergreens, and to conceal from the community the religious nature of religious activities conducted in the privacy of an apartment. Evergreens' message was clear—religious residents could not expect to enjoy the benefits of Evergreens' facilities to the same extent and with the same freedom as residents who held different beliefs.

Second, the Notice, served on the Hauges on account of their religious practice, is an unlawful act manifesting discriminatory intent and effecting discriminatory impact. Primarily, the Notice fabricates a lease violation by mischaracterizing Hauge's Bible study and religious practice as a business activity prohibited in either the Community Room or the apartment. *See Exhibit C* at page 2, para. 4, subsection (d). Hauge may be a minister by profession, but he led the Bible study in his personal capacity and on his own time. The Bible study was nondenominational, not affiliated with a church, and Hauge received no compensation for his leadership of it. Such studies are a common practice among Christians, who often gather outside of their churches to study the Bible and develop friendships in their spare time. As such, the Bible study is not a business activity.

Likewise, the Notice mischaracterizes Hauge and other residents' habit of watching a documentary or travelogue in the Community Room as "religious movie screening," which it also considers a prohibited business activity. The handful of residents who gather to watch the programs on Sunday night do so informally, desiring simply to share a casual activity with others in order to fill an otherwise empty evening. The individuals who participate vary from week to week, and, contrary to the Notice's allegation, they include anyone who is interested in the program. Although such programs may cover the history of a geographic area, including religious and cultural context, they are not religious movies. Nevertheless, the Notice deems even these incidental references to

⁵ To our knowledge, the residents suffering from this pattern of discrimination adhere to various denominations of the Christian faith.

religion as prohibited conduct, meriting eviction.⁶ Notably absent from this activity is any commercial character that would render it even arguably a business activity. Indeed, upon information and belief, Evergreens management has permitted actual commercial activity in common areas, including staff Tupperware parties, Boy Scout popcorn sales, and charity fundraising sales. In contrast, Evergreens' willingness to categorize a vague, tangential appearance of religious content as prohibited "business" activity evinces a deeply discriminatory intent to isolate, intimidate, and discriminate against our clients and other residents because of their religious identity.

However, even ignoring the history of discriminatory intent against residents of faith, the Notice's additional rationales for prohibiting the Bible study contain facial and factual inconsistencies admitting of unlawful disparate treatment. For example, the Notice implies that CRC's and Evergreens' objection to the Bible study derives from the alleged attendance of nonresidents.⁷ Yet, the Notice lists a number of permitted events, including birthday parties, wedding receptions, and funeral gatherings, which entail nonresident attendees. Indeed, throughout the relevant time period, Evergreens permitted an outside civic organization, the [REDACTED], to host its monthly meetings in the Community Room even though it is primarily comprised of nonresidents. Further, the Notice characterizes the Bible study as an unauthorized event Evergreens recently discovered, but CRC and Evergreens were aware of the Bible study for approximately a year and a half, even approving its Community Room use and listing it on the resident calendar for a time. Such inconsistencies indicate that these rationales are a pretext for religious discrimination.

Finally, the Notice purports to enforce provisions of Hauge's lease which prohibit residents from "behav[ing] in a loud or obnoxious manner, disturbing or threatening the rights, comfort, health, safety, or convenience of others" See Exhibit C at page 1-2. However, this effort rings remarkably hollow given that, to our knowledge, neither CRC nor Evergreens have enforced such rules and provisions against Evergreens residents who have harassed the Hagues and Bible study attendees on account of their religious beliefs and have attempted to interfere with their religious practice.

In this way, the Notice manifests distinctly discriminatory intent, treatment, and impact against the Hagues because of their religious belief and practice. Accordingly, the Notice, which restricts Hauge's access to the Community Room, restricts Hauge's freedom to freely exercise his religious beliefs in the privacy of his apartment, and threatens to terminate his lease unless he abandons his free exercise of religion, violates the FHA.

Third, the Policy discriminates against religious residents and results in religious adherents receiving unequal treatment. Evergreens' Community Room provides residents with space to use for a variety of activities, including weekly bingo, bridge, and poker games, anniversary and birthday parties, and monthly resident socials. In addition, as the Notice specified, residents may

⁶ Finally, the Notice falsely alleges that Hauge conducted pastoral counseling at the Evergreens, although he has never done so either in the Community Room or in his own apartment.

⁷ Contrary to the Notice's assertion, the Bible study is comprised of residents of the Evergreens and not open to the general public. However, Evergreens *staff*, though not residents themselves, customarily use the Community Room to host personal events, such as baby showers, graduation celebrations, or Tupperware parties.

reserve the Community Room for bridal showers, birthday parties, wedding receptions, and funeral gatherings. *See* Exhibit C at page 2 para. 3. However, the new Policy explicitly prohibits residents from using the Community Room for “[r]eligious services or for other religious purposes.” Exhibit B at page 1. The United States Department of Justice describes a strikingly similar scenario as a textbook example of unlawful religious discrimination under the FHA: “An apartment complex has a meeting room that is available for residents to reserve for card games, social activities, and similar events. A resident is told that she may not use the room to hold a Bible study with friends.”⁸ In the same way, the Policy facially discriminates against Evergreens residents on the basis of religion.

Moreover, through both the Notice and over a year of questionable behavior (described above), Evergreens has demonstrated that it defines the term “religious purposes” broadly. Such expansive religious prohibitions invite arbitrary and discriminatory application, even if undertaken by someone who holds no discriminatory intent. However, in the hands of one who intends to discriminate on the basis of religion, this Policy provides a formidable weapon. As a result, no resident of faith can feel safe watching, reading, or discussing any material containing religious references, no matter how tangential or academic those references may be. In fact, since Evergreens issued the Policy and Notice, some residents, including Liv Hauge, fear making even small references to religion in casual conversation lest they be harassed by other residents, reported to Evergreens management, or evicted.

Conclusion

CRC and Evergreens’ actions make clear that residents of faith must choose between religious exercise and living with a roof over their heads. As a result, CRC and Evergreens effect profound discrimination against residents of faith. As for the Hagues, they live in fear that any religious exercise, even in the privacy of their own apartment, will prompt eviction. These actions blatantly violate the FHA’s protection from religious discrimination related to housing. *See* 42 U.S.C. § 3604(a), (b).

For fear of losing their home, the Hagues complied with the Notice and Policy by ceasing to hold Bible study meetings pending resolution of this matter. We respectfully request that the Department investigate CRC’s and Evergreens’ behavior and take all appropriate action.

Thank you for your prompt attention to this matter.

Sincerely,

Lea Patterson
Associate Counsel
First Liberty Institute

[Enclosures]

⁸ U.S. Dep’t of Justice, *Combating Religious Discrimination and Protecting Religious Freedom*, Dec. 4, 2017, <https://www.justice.gov/Combating%20Religious%20Discrimination%20And%20Protecting%20Religious%20Freedom>.