

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

KENNETH HAUGE & )  
LIV HAUGE, )  
 )  
Plaintiffs, )

v. )

CIVIL ACTION NO. 3:19cv379

COMMUNITY REALTY COMPANY, INC., )  
THE EVERGREENS AT SMITH RUN, LLC, )  
DOUGLAS ERDMAN, individually and in his )  
official capacity as Owner, President, and )  
Principal Broker of Community Realty Company, )  
Inc., KIMBERLY ZYLKA, individually and in )  
her official capacity as Director of Residential )  
Property Management of Community Realty )  
Company, Inc., SPENCER FRIED, individually )  
and in his official capacity as Property Manager )  
of Community Realty Company, Inc., and )  
TANITA KEARSE, individually and in her )  
official capacity as Community Manager of )  
Community Realty Company, Inc., )  
 )  
Defendants. )

**COMPLAINT**

For their Complaint in the above-captioned matter, Kenneth and Liv Hauge, through counsel, state as follows:

**Nature of the Action**

1. This case seeks to vindicate the rights of tenants of The Evergreens at Smith Run, a senior living apartment community in Fredericksburg, Virginia (“The Evergreens”), to practice their religions in their own homes and community areas their landlord makes available to them for personal use, as guaranteed by the federal Fair Housing Act (“FHA”) and Virginia Fair Housing Law (“VFHL”).

2. Plaintiffs Kenneth and Liv Hauge are a retired couple who reside at The Evergreens. From 2017 to 2018, the Hauges hosted a weekly Bible study for fellow residents led by Ken, a retired Lutheran minister. They (and other residents) also desired to say grace over their meals at social events they attended. These friendly efforts and religious convictions were met, however, with hostility from Defendants (the owners and managers of The Evergreens) and a small group of fellow residents. The latter group went so far as to verbally accost Bible Study participants and, on at least one occasion, physically assault them. They also threatened to leave the Evergreens and pursue lawsuits against Defendants if the Bible Study were allowed to continue.

3. With full knowledge of these facts and cowed by hostile residents' religiously discriminatory demands, Community Realty Company, Inc. ("CRC") and its fellow Defendants chose the easy way out. They decided to discriminate against the Hauges and others on the basis of religion, by first banning residents from publicly saying grace before their meals, and then prohibiting the Hauges from hosting Bible Study *anywhere* at The Evergreens, including their own apartment, under threat of eviction if they further engage in this particular religious practice.

4. Faced with the choice of acceding to discriminatory demands or losing their home, the Hauges opted for the former. But the law protects tenants from Hobson's choices like these, by prohibiting landlords from preventing tenants' religious practices. The Hauges therefore bring this action for violations of the FHA and the VFHL, and breach of the Hauges' lease agreement, to redress the Defendants' discriminatory housing practices.

#### **Jurisdiction and Venue**

5. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over claims arising under the FHA.

6. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over the pendent state law claims.

7. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the Eastern District of Virginia, the judicial district in which the claims arose, and in which, upon information and belief, all defendants reside or conduct business.

### **The Parties**

8. Plaintiff Kenneth Hauge is an 86-year-old retired minister of the Evangelical Lutheran Church in America and U.S. Air Force veteran. Ken most recently served as a part-time pastor at a small local church.

9. Plaintiff Liv Hauge is an 85-year-old retired music director of the Evangelical Lutheran Church in America. She has been married to Ken Hauge for nearly 64 years.

10. Defendant The Evergreens at Smith Run, LLC (“ESR”) is a Virginia limited liability company. ESR owns The Evergreens, a senior living (ages 55+) apartment community property located at 2700 Cowan Boulevard, Fredericksburg, Virginia 22401. The Evergreens consists of approximately 128–130 individual apartment homes, as well as a variety of community spaces and other shared amenities.

11. Defendant CRC is a Maryland corporation headquartered in Silver Spring, Maryland. CRC owns ESR and operates The Evergreens. CRC is licensed by the Virginia Department of Professional and Occupational Regulation (“DPOR”) as a real estate firm under License # 0226009939.

12. Defendant Douglas Erdman is Owner and President of CRC. He is CRC’s Principal Broker under DPOR License # 0225027971. Despite knowing about the discriminatory acts at issue here, Erdman failed to take prompt action to correct them even though he had the authority to do so. On the contrary, Erdman has publicly defended these discriminatory acts in news reports.

13. Defendant Kimberly Zylka is Director of Residential Property Management at CRC. Zylka was directly informed about the discriminatory acts at issue here, but she did not take prompt action to correct them despite having the authority to do so.

14. Defendant Spencer Fried is a Property Manager for CRC. He has direct management responsibility for The Evergreens. Like Erdman, Fried knew about the discriminatory acts at issue here but did not take prompt action to correct them despite having the authority to do so.

15. Defendant Tanita Kearsse is a Community Manager for CRC. As alleged below, Kearsse was the corporate face for much of the religious discrimination against the Hauges and other residents of The Evergreens wishing to practice their various faiths within the community.

### **Facts**

#### **The Hauges Move in to the Evergreens.**

16. In January 2017, the Hauges entered into a two-year lease with ESR and moved into a modest, two-bedroom apartment home at The Evergreens. The lease is attached to this Complaint as **Exhibit A**.

17. The Hauges selected The Evergreens because of its proximity to area hospitals and shopping, and by the amenities that The Evergreens has to offer, including the Community Room (alternatively referred to as the “club room” in certain of Defendants’ advertisements and documents). Indeed, The Evergreens’ website touts the “benefits of living at The Evergreens,” which “don’t stop at your apartment door.” The advertised amenities specifically include “our outdoor heated pool, social clubs, fitness center & exercise classes, billiards & card room, and clubroom with piano, coffee bar and lending library.”

18. When the Hauges toured The Evergreens before signing their lease, an employee showed them all of the foregoing amenities and told them to think of the whole property as their

“home.” Consistent with that statement, the Hauges’ lease specifically grants them the “license” and “privilege” of using The Evergreens’ amenities, subject to revocation only for a “lawful reason.” Ex. A, Community Policies, Rules and Regulations Addend. ¶ I.

19. The Community Room is a popular amenity at The Evergreens. It is open and available for residents to use for a variety of private or community-wide events, such as birthday and anniversary parties, card games, knitting circles, and resident socials. An outside civic organization, The Mary Ball Woman’s Club, also holds its private monthly meetings in the Community Room. Most recently, The Evergreens management has permitted presentations in the Community Room by various commercial representatives, including Mary Kay, Allstate, and a local home healthcare company.

20. The Community Room is generally available for resident use on a first-come, first-served basis. Residents can also request in advance to reserve the Community Room for a private or community event. To reserve the Community Room for a private event, residents must put down a \$100 deposit; for resident-sponsored community events, no deposit is required.

21. Once The Evergreens management approves a resident’s reservation request, the event is placed on a bi-monthly calendar distributed to all residents. The Evergreens also provides bulletin boards in the building’s hallways for residents to post various informational flyers with management approval.

**Fellow Residents Ask Ken to Lead a Bible Study, But Management Blocks Them  
From Holding the Bible Study in the Community Room.**

22. Soon after the Hauges moved into The Evergreens, Ken received unsolicited requests from other residents to lead a non-denominational Bible Study for interested residents on Wednesday evenings. Ken agreed to do so in his personal capacity.

23. Bible study is a critical part of the Hauges’ and other residents’ faith. It affords not only the opportunity to study scripture, but to create community with other Christians. In fact, one

of the primary purposes of the Bible Study was to bring together residents from many different denominations to learn from each other and grow together in their faith.

24. The first Bible Study met on March 22, 2017 in a small card room adjoining the Community Room. It was comprised of The Evergreens residents and was not open to the general public. Due to the number of residents interested in the Bible Study, Ken contacted Kearsse in March 2017 to begin formally reserving the larger Community Room once a week for Bible Study gatherings.

25. Kearsse approved the reservation request, classifying the Bible Study as a “private party” under The Evergreens’ rules. Ken, therefore, paid the required \$100 deposit to reserve the room on a weekly basis. She also would only make the weekly reservation on the condition that Ken refer to the event as a “book review” rather than a “Bible Study.” Despite Ken’s personal views to the contrary, he complied with Kearsse’s demand.

26. Due to a misunderstanding about the start date of the weekly Community Room reservation, the Community Room had not been reserved for Bible Study when participants arrived on March 29, 2017. Kimberly Dorsey, a leasing consultant at The Evergreens, warned Ken that he had “better not use the Community Room,” even though no other event was scheduled for that evening. As a last-minute alternative to meeting in the Community Room, one of the Bible Study attendees, who was also a resident social director at the time, suggested that the participants meet in a vacant, unlocked apartment, which they did.

27. After learning of the Bible Study’s use of the vacant apartment, on March 30, 2017 Kearsse called Ken to her office and admonished him. Ken explained that he mistakenly believed the resident social director was authorized to approve use of the vacant apartment. Ken and the resident social director both apologized to Kearsse for the mistake, but Kearsse informed Ken that,

as a penalty for the incident, she was cancelling the Bible Study reservation and returning his deposit. Ken accepted her action without protest.

**The Bible Study Group Meets in a Resident's Apartment,  
But Management Continues to Require that it be Called a "Book Review."**

28. After Kearsé cancelled the Bible Study's reservation of the Community Room, another participant volunteered to host the Bible Study in her apartment at The Evergreens. The group met in this apartment from April to December 2017.

29. During that time, Ken posted flyers announcing the Bible Study on The Evergreens' bulletin boards. While Kearsé approved Ken's flyer announcing each Bible Study meeting, she continued to insist that it be advertised as a "book review" rather than a Bible Study. Once again, Ken went along with Kearsé's conditions to avoid causing trouble.

30. Kearsé's efforts to stifle the Bible Study were consistent with her efforts to stifle other public expressions of faith at The Evergreens at CRC-sponsored events open to all residents. Throughout 2017, Kearsé went out of her way to hide public displays of religious practice at The Evergreens.

31. On or about February 2017, Kearsé instituted a policy prohibiting residents from audibly saying grace over their meals during community events. When asked by Ken about this policy on or about April or May 2017, Kearsé offered only that she believed that there were far more people at The Evergreens that objected to residents saying grace than there were those who supported it.

32. In July 2017, Kearsé agreed to reimburse certain expenses for a luau-themed resident social dinner open to all residents from a CRC-managed "tenants' fund." Upon information and belief, CRC maintains the so-called "tenants' fund" to reimburse residents for expenses incurred for community-wide events, such as socials. But because Ken briefly and audibly said grace over the July 28, 2017 social dinner after another resident asked him to do so,

certain other residents in attendance took offense. Kearsse subsequently refused reimbursement specifically citing the prayer as the reason for her refusal.

33. In November 2017, Kearsse again expressly prohibited residents from saying audible prayers over their meals at The Evergreens' Thanksgiving dinner social. Residents were told they must say grace silently or leave the room to say grace and then return to the dinner area. Upon information and belief, the anti-grace policy implicitly, if not explicitly, remains in force today at The Evergreens.

34. The Bible Study quickly grew to the point where participants could no longer comfortably or safely meet in an apartment. For example, attendees who used walkers often had to leave their walkers outside the apartment to avoid creating a hazard inside the apartment's small hallway and kitchen.

**Management Temporarily Reverses Course and  
Allows the Bible Study To Meet in the Community Room.**

35. In January 2018, Joanne Jensen, a retired federal agent and surrogate daughter of a Bible Study participant, contacted Fried on behalf of several Bible Study participants to complain about Kearsse's unacceptable behavior. Jensen explained to Fried that residents had asked her to contact him, but not to mention their names for fear of retribution and retaliation by Kearsse.

36. Fried spoke to Jensen by telephone on or about January 5, 2018 and January 11, 2018.

37. On the January 5th call, Fried said, among other things, that CRC would consult with legal counsel about allowing Bible Study flyers to indicate the event is a Bible study rather than a "book review." Jensen followed up on this call with a letter and email to Fried.

38. On the January 11th call, Fried stated that (1) residents would receive reimbursement from the tenants' fund for their luau-themed dinner after all; (2) Bible Study participants would be able to meet in the Community Room; and (3) Bible Study participants



would also be permitted to post flyers in The Evergreens advertising the event as a “Bible Study,” but had to do so on CRC-approved paper that included a disclaimer that the event was not sponsored or endorsed by CRC.

39. Kearsce thereafter ceased censoring the Bible Study’s title by describing it as a “book review” in approved flyers. Further reversing course, she also allowed the Bible Study to meet in the Community Room, listing it as a resident-sponsored community activity on bi-monthly resident calendars.

40. Kearsce did not, however, reimburse residents’ expenses for the luau-themed social dinner as Fried promised. On March 20, 2018, Jensen wrote an email with an attached letter to Zylka, CRC’s Director of Residential Property Management, about these issues, her conversations with Fried, and her lingering concerns about possible religious discrimination occurring at The Evergreens. In her letter to Zylka, Jensen noted that Fried was not receptive to her suggestion that Fried meet with residents to discuss the outstanding issues. Jensen also told Zylka that residents did not want to give their names “for fear of retribution.” Furthermore, Jensen highlighted that, based on CRC’s actions, one could draw the conclusion that “the company is hostile to residents wishing to say prayer at group events . . . among like-minded individuals.”

41. Zylka brushed off Jensen’s email and letter. Responding by email, Zylka told Jensen she would “forward” Jensen’s email to CRC’s “legal counsel.” But Zylka claimed she could not discuss “property and resident related issues” with Jensen because she was not a lease holder, occupant, or emergency contact for a resident. Jensen heard nothing further in response to her email to Zylka.

42. The resident social director finally received reimbursement for the July 28, 2017 luau-themed social dinner on March 30, 2018.

**Other Residents Harass Bible Study Participants Because of Their Religious Practices, But Management Fails to Take Action.**

43. The Bible Study met in the Community Room from January to July 2018. It remained non-denominational and was open to any resident who wished to participate. Although the Hauges and other members of the group invited others to join Bible Study in the spirit of fellowship, the decisions of those who did not wish to attend were respected.

44. Nevertheless, a small but vocal minority of residents took offense to the Bible Study and its participants, whom some of them disparagingly referred to as “evangelical.”

45. Between January and June 2018, harassment by these residents included, but was not limited to: (1) calling a female Bible Study participant a “f\_\_-ing b\_\_\_\_\_”; (2) threatening to “deck” another Bible Study participant (who is a retired Baptist minister); (3) in late Spring 2018, publicly lambasting Ken in the Community Room with a loud, prolonged, profane outburst regarding the Bible Study’s religious nature; (4) confronting Ken by questioning his credentials as a minister and calling him an “a\_\_hole”; (5) calling Liv and another Bible Study participant “Bible-thumpers” upon seeing them bringing cookies to a new resident; (6) confronting Bible Study participants about “that preacher man” (*i.e.*, Ken); and (7) calling out and questioning Catholics who chose to attend the Bible Study.

46. The Hauges and other Bible Study participants felt intimidated by these residents. They were concerned about being confronted in The Evergreens’ common areas and subjected to profane rants, disparaging comments, snubbing, and hostile glares. They voiced their concerns and reported the harassment to Kears. At no time, however, did Kears or any of the other Defendants attempt more than a cursory investigation of the Bible Study participants’ reports of harassment. Defendants also took no steps to prevent the harassment of the Bible Study participants, despite having the power to do so, such as under the terms of each resident’s lease.

47. For example, after the third and fourth examples in paragraph 45, Ken complained to Kearsse about it. Kearsse agreed that such behavior from a resident was inappropriate, but took no action to investigate further or take action against the perpetrator.

48. Management took a very different approach to reports made by residents hostile to the Bible Study group. For their part, between January and June 2018, these residents made their own reports to Kearsse that were both false and religiously biased on their face.

49. For example, the residents complained to Kearsse that Ken and other Bible Study participants were watching religious films in the Community Room on some Sunday evenings. In fact, the videos consisted of documentaries and travelogues (some of which air on PBS), not “religious” films. In any event, these Sunday evening viewings were informal get-togethers of varying residents who wanted something fun to do on uneventful Sunday evenings. They only occurred when the Community Room was not reserved for an event or otherwise being used by other residents. No one was barred from entering and enjoying the Community Room as they wished during these times.

50. In another example, one of these residents accused Ken of engaging in pastoral counseling in the card room, which is connected to the Community Room. In fact, one afternoon when Ken and other residents were waiting in the Community Room for the mail to arrive, another resident asked to speak to Ken privately about a personal matter. They stepped into the unoccupied card room, spoke for about 15-20 minutes, then left about 15 minutes prior to the beginning of a regularly scheduled poker game. The personal meeting was not “pastoral counseling.”

51. In still another example, in mid-Spring 2018, a resident confronted Ken about the Bible Study in Kearsse’s office. The other resident challenged use of the Community Room for Bible Study on the “general principle” that the Community Room should be available at all times for any resident to use, and that she and others did not feel comfortable entering the Community

Room when the Bible Study was meeting, notwithstanding that the Community Rules allow both private events and scheduled community events, and the Bible Study was always scheduled in accordance with these rules, first as a private event and then as a scheduled community event. Upon information and belief, Kearsa observed this conversation.

52. Rather than investigate these allegations or apply its own rules as written, management accepted the hostile residents' reports and general complaints at face value.

53. Moreover, upon information and belief, management now appears to have gone further and allowed several of the individual residents opposed to the Bible Study to exercise certain authority on the premises. For example, some of these residents have been allowed to retain keys to storage rooms, dispose of management-owned puzzles, accompany maintenance personnel to other residents' apartments, direct contract work, and fulfill a maintenance request.

54. These residents' apparent sway over management may be a function of threats to Kearsa and CRC. Some of these residents threatened Kearsa with the loss of her job and threatened to contact the ACLU if the Bible Study was allowed to continue.

**Without Prior Warning, Management Sends the Notice to the Hauges and Changes its Community Room Usage Policy.**

55. On July 23, 2018, matters came to a head. Without warning, the Hauges received a "Notice to Cure Default or Quit" (the "Notice"). The Notice, which states copies were sent to at least Fried and Zylka, is attached to this Complaint as **Exhibit B**. While Kearsa signed the Notice, she told Ken on July 26, 2018 that CRC's legal counsel prepared it.

56. The Notice claimed that the Hauges have "breached the terms of your Lease by engaging in conduct which has caused, and continues to cause, serious and substantial disturbances with other residents of the Community." More specifically, the Notice claimed that the Hauges were "operating an unauthorized business in Community facilities and interfering with other residents' use of Community facilities," citing "a series of complaints over the past several months

regarding your conduct at the Community.” The Notice went on to specifically list the Bible Study, viewings and discussions of purportedly “religious” films in the Community Room on Sunday evenings, and alleged pastoral counseling as the activities of which other residents have complained. The Notice also stated that complaining residents have “stated that they will be vacating the Community at the conclusion of their respective Lease term” due to the Hauges’ religious activities.

57. The Notice gave the Hauges 21 days to “cure” the alleged breaches of their lease, or until August 31, 2018 at 11:59:59 to “quit and vacate” The Evergreens. To “cure” the purported breaches, the Notice demanded that the Hauges “submit[] a completed Request for [Community] Room form and appropriate deposit to Landlord in advance of any activity you seek to hold in the [Community] Room and comply[] with Landlord’s determination as to whether the requested activity/function is permitted”; “cease holding Bible study classes, religious movie screenings and/or ‘counseling’ sessions in the [Community] Room”; and “cease conducting any business operations in the Apartment and the Community (including, without limitation, the [Community] Room) other than those expressly permitted under your Lease.” The Notice went on to state that “Bible study class, religious movie screenings and ‘counseling’ sessions are not permitted ‘at home’ business operations pursuant to your Lease, nor permitted activities in the [Community] Room.” By impermissibly classifying the Bible Study as a “business operation,” the Notice bars the Hauges from holding the Bible Study even in the privacy of their own apartment.

58. The Notice threatened that, if the Hauges did “not comply with the terms of this Notice, then the Landlord will be entitled to file a Summons for Unlawful Detainer against you with the Fredericksburg General District Court to obtain possession of” the Hauges’ apartment, among other things.

59. Had Defendants taken seriously and investigated Bible Study participants' numerous complaints of religious harassment, however, they would have known that there is no basis for the accusations leveled in the Notice. The Hauges did not engage in and are not aware of any "serious and substantial disturbances" caused by the Bible Study. On the contrary, to the best of the Hauges' knowledge, Bible Study participants conducted themselves appropriately at all times. Nor was Ken conducting a business at The Evergreens by leading the Bible Study, watching documentaries with other residents, or speaking with another resident about a personal matter at the resident's request. Ken received no compensation for any of those activities, doing them on his own time and unconnected to any church.

60. Since receiving the Notice, the Hauges have ceased all Bible Study activities, including in their own or others' private apartments at The Evergreens, to avoid eviction as expressly required by the Notice. The Hauges (and other residents) wish to resume Bible Study at The Evergreens, but cannot do so because of the threat of eviction.

61. Also on July 23, 2018, The Evergreens residents received a new Community Room Usage Policy (the "Policy"). The Policy is attached to this Complaint as **Exhibit C**. Among other things, the Policy informed residents that "[m]anagement has determined that certain activities are inappropriate for the Community Room," including "religious services" or "other religious purposes."

62. Since receiving the Policy, numerous Bible Study participants and other residents have written to CRC urging it to reconsider its policy prohibiting religious activity in the Community Room. CRC has failed to respond to these requests.

63. The Notice and the Policy have, however, apparently satisfied those residents that were hostile to the Bible Study. Upon learning of the Policy, one of the residents told other residents he was pleased "religion is out of here."

**The Hauges Attempt to Resolve the Dispute with CRC But Are Stonewalled.**

64. On August 16, 2018, *pro bono* counsel for the Hauges sent a letter to CRC's counsel identified in the Notice. The letter is attached to this Complaint as **Exhibit D**. The letter addressed the false allegations in the Notice, explained CRC's obligations under the FHA, and requested that CRC withdraw the Notice and Policy.

65. CRC never responded to this letter. Instead, shortly after the letter was sent, management posted a statement on a bulletin board at The Evergreens, asserting that the Hauges "did not accurately portray the situation" at The Evergreens. In fact, the statement claimed that "[a]t no point have Mr. and Mrs. Hague [*sic*] been denied the right to practice their religion in their apartment," and that CRC "fully complies with all fair housing laws." That statement, of course, was false and contradicted by the Notice and the Policy. A photograph of this undated statement is attached to this Complaint as **Exhibit E**.

66. Management posted a second statement on a bulletin board at The Evergreens dated September 5, 2018. This statement, which did not name the Hauges, said it was "untrue" that CRC "restricted the religious practices of residents in their homes" or "issued an 'eviction notice' or filed a lawsuit to recover possession of an apartment based upon anyone's religion." That statement, like the prior posted statement, was false and contradicted by the Notice. The statement falsely said further that "[t]he dispute related only to the use of the Community Room, the common area enjoyed by all residents in our buildings." Admitting that the Policy "prohibited any political or religious activities in the Community Room," the statement claimed such religious discrimination was necessary because of the "challenges" of "balancing the different preferences of the many people of diverse interests who live here." A photograph of CRC's September 5 statement is attached to this Complaint as **Exhibit F**.

67. Defendants made similar statements to the press, which covered CRC's discriminatory actions against the Hauges. In multiple reports, CRC denied any wrongdoing, asserting that CRC adheres to fair housing laws even as it admitted that the Community Room Policy "expressly prohibited any political or religious activities in the Community Room." For his part, Erdman (CRC's Owner and President) was quoted as saying that the Hauges had not "been denied the right to practice their religion in their apartment." That statement, like the prior posted statements at The Evergreens, was flatly contradicted by the Notice.

68. Faced with Defendants' continued intransigence, on October 9, 2018, the Hauges through counsel filed a complaint with the U.S. Department of Housing and Urban Development ("HUD") alleging that CRC and ESR violated the Fair Housing Act. After receiving the complaint, HUD referred the case to the DPOR under a federal-state cooperation program. Within DPOR, the Real Estate Board initiated an investigation into the allegations.

69. In the meantime, Defendants have continued to enforce the new ban on religious activity in the Community Room. On December 15 and 17, 2018, a resident asked Kears to approve a holiday church service in the Community Room because other residents, including his wife, could not leave the building to attend church services due to old age or sickness. In two response letters, Kears denied the request because of the new Policy.

70. Defendants also continue to stand idly by as residents hostile to the Bible Study harass the former participants. As one recent incident demonstrates, the situation has continued to deteriorate. On January 31, 2019, one of the hostile residents physically rammed one Bible Study participant with her own walker while stating "[y]ou're a liar and so is that preacher." Kears received complaints and witness statements from the residents involved, but rather than investigate further or evict or take other action against the perpetrator, told the victim something to the effect of "You stay away from her, and she'll stay away from you."



**CRC Has Not Allowed the Hauges to Renew their Lease.**

71. On December 31, 2018, the Hauges' two-year lease expired. In December 2018, Ken asked Kearsa about renewal of the lease. Kearsa indicated that "corporate" would have to approve it, but that she expected they would eventually.

72. In February 2019, having yet to receive a renewal of their lease, Ken again asked Kearsa about it. Kearsa told Ken not to worry about it and that the Hauges could continue to reside at The Evergreens on a month-to-month basis.

73. As of the date of this Complaint, the Hauges have been unable to sign a new lease and have been living in their apartment on a month-to-month basis since January 1, 2019, despite desiring to remain at The Evergreens without the threat of discrimination because of their religion.

74. Upon information and belief, multiple other residents at The Evergreens have been granted lease renewals since the Hauges offered to renew their lease on similar terms.

**Statutory and Regulatory Framework**

**Fair Housing Act**

75. The FHA makes it unlawful to:

- "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . religion,"
- "discriminate against any person in the terms, conditions, or privileges of . . . rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion," or
- "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” 42 U.S.C. § 3604.

42 U.S.C. §§ 3604(a)-(b), 3617; *see also* 24 C.F.R. §§ 100.65(a)-(b) (implementing § 3604), 100.400 (implementing § 3617), 100.600 (implementing §§ 3604 and 3617).

76. A person is directly liable for a violation of the FHA for:

(i) The person’s own conduct that results in a discriminatory housing practice.

(ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person’s employee or agent, where the person knew or should have known of the discriminatory conduct.

(iii) Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.

24 C.F.R. § 100.7(a)(1)(iii).

77. A person can also be vicariously liable for violations of the FHA. 24 C.F.R. § 100.7(b).

### **Virginia Fair Housing Law**

78. Very similar to the FHA, the VFHL makes it unlawful:

- “To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . religion, . . . ,”
- “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 the connection therewith to any person because of . . . religion, . . . ,” and

- “for any person 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 the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by [the VHFL].”

Va. Code §§ 36-96.3 A.1-.2, 36-96.5.

**Count I**  
**(Against All Defendants)**  
**Violation of the Fair Housing Act, 42 U.S.C. § 3604(a)**

79. The Hauges reallege and incorporate by reference the allegations contained in paragraphs 1–78 as if fully set forth herein.

80. The Hauges are qualified to rent their apartment at The Evergreens.

81. Bible Study and saying grace before meals are parts of the Hauges’ religious practices.

82. Under 42 U.S.C. § 3604(a), the Defendants are prohibited from engaging in religiously discriminatory housing practices concerning the availability of dwellings. “Dwelling” is defined under the FHA to mean “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families . . . .” 42 U.S.C. § 3602(b).

83. In issuing the Notice, Defendants unlawfully made unavailable or otherwise denied the Hauges part of their dwelling because of religion, by expressly conditioning the Hauges’ continued tenancy at The Evergreens on not conducting “Bible study class” within their apartment or the Community Room.

84. Defendants also expressly conditioned the Notice and the Hauges’ continued tenancy on the Hauges refraining from “religious movie screenings and [pastoral] ‘counseling’ sessions” at The Evergreens. While Defendants were mistaken that such innocent events were

religious in nature, they nevertheless constitute a religiously discriminatory housing practice under 42 U.S.C. § 3604(a), as they were “because of . . . religion.”

85. In issuing the Policy, Defendants further unlawfully made unavailable or otherwise denied the Hauges part of their dwelling because of religion, by expressly prohibiting the Hauges (and all other residents of The Evergreens) from reserving or using the Community Room for religious practices. The Community Room is part and parcel of tenancy at The Evergreens, it is referenced in the Hauges’ lease, it was presented to them as a part of their “home,” and it is advertised by Defendants as an amenity for tenants’ use.

86. In refusing to allow the Hauges to execute a new multi-year lease for their apartment at The Evergreens, after they requested to do so, Defendants also unlawfully refused to rent the Hauges their apartment for a term greater than one month after the Hauges made a bona fide renewal offer, and/or Defendants refused to negotiate for the rental of the Hauges’ apartment, because of religion.

87. Additionally, Defendants knew that some residents were so severely and pervasively discriminating against the Hauges and other residents because of religion that the residents’ actions interfered with rights secured by 42 U.S.C. § 3604(a), yet Defendants did nothing to stop them despite having the power to do so. Thus, Defendants violated 42 U.S.C. § 3604(a).

88. Defendants’ actions were motivated by their intent to discriminate against the Hauges on the basis of their religion and provide direct evidence of their discriminatory intent. In the alternative, Defendants’ actions at least have a discriminatory effect on Christians hoping to openly practice their faith at The Evergreens.

**Count II**  
**(Against All Defendants)**  
**Violation of the Fair Housing Act, 42 U.S.C. § 3604(b)**

89. The Hauges reallege and incorporate by reference the allegations contained in paragraphs 1–88 as if fully set forth herein.

90. The Hauges are qualified to rent their apartment at The Evergreens.

91. Bible Study and saying grace before meals are parts of the Hauges’ religious practices.

92. Under 42 U.S.C. § 3604(b), Defendants are prohibited from engaging in religiously discriminatory housing practices involving the terms, conditions, and privileges of rentals, or in the provision of services or facilities in connection therewith. Under the terms of The Evergreens residents’ leases, they are entitled to occupy and use their apartments. Additionally, under their leases, use of the Community Room is expressly a “privilege” of residents of The Evergreens.

93. In issuing the Notice, Defendants unlawfully discriminated in the Hauges’ privileges of rental, and/or in the provision of facilities in connection therewith, because of religion, by limiting the Hauges’ privileges to use their own apartment and the Community Room for Bible Study.

94. Defendants also expressly conditioned the Notice and the Hauges’ privilege in continued tenancy at The Evergreens and use of the Community Room on the Hauges refraining from “religious movie screenings and [pastoral] ‘counseling’ sessions” at The Evergreens. While Defendants were mistaken that such innocent events were religious in nature, they nevertheless constitute a religiously discriminatory housing practice under 42 U.S.C. § 3604(b), as they were “because of ... religion.”

95. In issuing the Policy, Defendants unlawfully discriminated in denying the Hauges’ and all other residents’ privileges of rental, and/or in the provisions of facilities therewith, because

of religion, by prohibiting any use of the Community Room for “religious services” or “other religious purposes.”

96. All Defendants are also directly or vicariously liable for Kearsse’s anti-grace policy, as it conditions and limits residents’ privileges to share in CRC-sponsored meals and socials free of religious discrimination, and obtain reimbursement for expenses for such events from the CRC-managed “tenants’ fund,” because of religion.

97. Additionally, Defendants knew that some residents were so severely and pervasively discriminating against the Hauges and other residents because of religion that the residents’ actions interfered with rights secured by 42 U.S.C. § 3604(b), yet Defendants did nothing to stop them despite having the power to do so. Thus, Defendants violated 42 U.S.C. § 3604(b).

98. Defendants’ actions were motivated by their intent to discriminate against the Hauges on the basis of their religion and provide direct evidence of their discriminatory intent. In the alternative, Defendants’ actions at least have a discriminatory effect on Christians hoping to openly practice their faith at The Evergreens.

**Count III**  
**(Against All Defendants)**  
**Violation of the Fair Housing Act, 42 U.S.C. § 3617**

99. The Hauges reallege and incorporates by reference the allegations contained in paragraphs 1–98 as if fully set forth herein.

100. Under 42 U.S.C. § 3617, Defendants are prohibited from coercing, intimidating, threatening, or interfering with tenants in the exercise or enjoyment of, or on account of them having exercised or enjoyed, or on account of them having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by 42 U.S.C. § 3604. In engaging in group Bible Study at The Evergreens, the Hauges and other residents were engaged in the

exercise and enjoyment of their rights to practice their religion within their dwelling without discrimination, a right granted or protected by 42 U.S.C. § 3604.

101. In stifling and ultimately shutting down the Bible Study via the Notice and Policy, Defendants unlawfully coerced, intimidated, threatened, and/or interfered with the Hauges because they (1) exercised or enjoyed rights granted or protected by 42 U.S.C. § 3604, and (2) aided and encouraged other residents to do the same.

102. Likewise, Defendants' Policy unlawfully coerced, intimidated, threatened, and/or interfered with the Hauges (1) on account of them having exercised or enjoyed rights granted or protected by 42 U.S.C. § 3604, and (2) having aided and encouraged other residents to do the same.

103. Additionally, Defendants knew that some residents were severely and pervasively discriminating against other residents because of religion because those residents exercised or enjoyed rights granted or protected by 42 U.S.C. § 3604, and aided and encouraged other residents to do the same, yet Defendants did nothing to stop the discrimination despite having the power to do so. Thus, Defendants violated 42 U.S.C. § 3617.

104. Defendants' actions were motivated by their intent to discriminate against the Hauges on the basis of their religion and provide direct evidence of their discriminatory intent. In the alternative, Defendants' actions at least have a discriminatory impact or effect on Christians hoping to openly practice their faith at The Evergreens.

**Count IV**  
**(Against All Defendants)**  
**Violation of the Virginia Fair Housing Law, Va. Code § 36-96.3.A.1**

105. The Hauges reallege and incorporate by reference the allegations contained in paragraphs 1–104 as if fully set forth herein.

106. The Hauges are qualified to rent their apartment at The Evergreens.

107. Bible Study and saying grace before meals are parts of the Hauges' religious practices.

108. Under Va. Code § 36-96.3.A.1, the Defendants are prohibited from engaging in religiously discriminatory housing practices concerning the availability of dwellings. "Dwelling" is defined under the VFHL to mean "any building, structure, or portion thereof that is occupied as, or designated or intended for occupancy as, a residence by one or more families . . . ." Va. Code § 36-96.1:1.

109. In issuing the Notice, Defendants unlawfully made unavailable or otherwise denied the Hauges part of their dwelling because of religion, by expressly conditioning the Hauges' continued tenancy at The Evergreens on not conducting "Bible study class" within their apartment or the Community Room.

110. Defendants also expressly conditioned the Notice and the Hauges' continued tenancy on the Hauges refraining from "religious movie screenings and [pastoral] 'counseling' sessions" at The Evergreens. While Defendants were mistaken that such innocent events were religious in nature, they nevertheless constitute a religiously discriminatory housing practice under Va. Code § 36-96.3.A.1, as they were "because of . . . religion."

111. In issuing the Policy, Defendants further unlawfully made unavailable or otherwise denied the Hauges part of their dwelling because of religion, by expressly prohibiting the Hauges (and all other residents of The Evergreens) from reserving or using the Community Room for religious practices. The Community Room is part and parcel of tenancy at The Evergreens, it is referenced in the Hauges' lease, it was presented to them as a part of their "home," and it is advertised by Defendants as an amenity for tenants' use.

112. In refusing to allow the Hauges to execute a new multi-year lease for their apartment at The Evergreens, after they requested to do so, Defendants also unlawfully refused to



rent the Hauges their apartment for a term greater than one month after the Hauges made a bona fide renewal offer, and/or Defendants refused to negotiate for the rental of the Hauges' apartment, because of religion.

113. Additionally, Defendants knew that some residents were so severely and pervasively discriminating against the Hauges and other residents because of religion that the residents' actions interfered with rights secured by Va. Code § 36-96.3.A.1, yet Defendants did nothing to stop them despite having the power to do so. Thus, Defendants violated Va. Code § 36-96.3.A.1.

114. Defendants' actions were motivated by their intent to discriminate against the Hauges on the basis of their religion and provide direct evidence of their discriminatory intent. In the alternative, Defendants' actions at least have a discriminatory effect on Christians hoping to openly practice their faith at The Evergreens.

**Count V**  
**(Against All Defendants)**  
**Violation of the Virginia Fair Housing Law, Va. Code § 36-96.3.A.2**

115. The Hauges reallege and incorporate by reference the allegations contained in paragraphs 1–114 as if fully set forth herein.

116. The Hauges are qualified to rent their apartment at The Evergreens.

117. Bible Study and saying grace before meals are parts of the Hauges' religious practices.

118. Under Va. Code § 36-96.3.A.2, Defendants are prohibited from engaging in religiously discriminatory housing practices involving the terms, conditions, and privileges of rentals, or in the provision of services or facilities in connection therewith.

119. In issuing the Notice, Defendants unlawfully discriminated in the Hauges' privileges of rental, and/or in the provision of facilities therewith, because of religion, by limiting the Hauges' privileges to use their own apartment and the Community Room for Bible Study.

120. Defendants also expressly conditioned the Notice and the Hauges' privilege in continued tenancy at The Evergreens and use of the Community Room on the Hauges refraining from "religious movie screenings and [pastoral] 'counseling' sessions" at The Evergreens. While Defendants were mistaken that such innocent events were religious in nature, they nevertheless constitute a religiously discriminatory housing practice under Va. Code § 36-96.3.A.2, as they were "because of . . . religion."

121. In issuing the Policy, Defendants unlawfully discriminated in the Hauges' and all other residents' privileges of rental, and/or in the provisions of facilities therewith, because of religion, by prohibiting any use of the Community Room for "religious services" or "other religious purposes."

122. All Defendants are also directly or vicariously liable for Kears's anti-grace policy, as it conditions and limits residents' privileges to share in CRC-sponsored meals and socials free of religious discrimination, and to obtain reimbursement for expenses for such events from the CRC-managed "tenants' fund," because of religion.

123. Additionally, Defendants knew that some residents were so severely and pervasively discriminating against the Hauges and other residents because of religion that the residents' actions interfered with rights secured by Va. Code § 36-96.3.A.2, yet Defendants did nothing to stop them despite having the power to do so. Thus, Defendants violated Va. Code § 36-96.3.A.2.

124. Defendants' actions were motivated by their intent to discriminate against the Hauges on the basis of their religion and provide direct evidence of their discriminatory intent. In the

alternative, Defendants' actions at least have a discriminatory impact or effect on Christians hoping to openly practice their faith at The Evergreens.

**Count VI**  
**(Against All Defendants)**  
**Violation of the Virginia Fair Housing Law, Va. Code § 36-96.5**

125. The Hauges reallege and incorporate by reference the allegations contained in paragraphs 1–124 as if fully set forth herein.

126. Under Va. Code § 36-96.5, Defendants are prohibited from coercing, intimidating, threatening, or interfering with tenants in the exercise or enjoyment of, or on account of them having exercised or enjoyed, or on account of them having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Va. Code § 36-96.3 A.1-.2.

127. In stifling and ultimately shutting down the Bible Study via the Notice and Policy, Defendants unlawfully coerced, intimidated, threatened, and/or interfered with the Hauges (1) on account of them having exercised or enjoyed rights granted or protected by Va. Code § 36-96.3 A.1-.2, and (2) having aided and encouraged other residents to do the same.

128. Likewise, Defendants' Policy unlawfully coerced, intimidated, threatened, and/or interfered with the Hauges because they (1) exercised or enjoyed rights granted or protected by Va. Code § 36-96.3 A.1-.2, and (2) aided and encouraged other residents to do the same.

129. Additionally, Defendants knew that some residents were severely and pervasively discriminating against other residents because of religion because those residents exercised or enjoyed rights granted or protected by Va. Code § 36-96.3 A.1-.2, and aided and encouraged other residents to do the same, yet Defendants did nothing to stop the discrimination despite having the power to do so. Thus, Defendants violated Va. Code § 36-96.5.

130. Defendants' actions were motivated by their intent to discriminate against the Hauges on the basis of their religion and provide direct evidence of their discriminatory intent. In the

alternative, Defendants' actions at least have a discriminatory impact or effect on Christians hoping to openly practice their faith at The Evergreens.

**Count VII**  
**(Against ESR)**  
**Breach of Contract**

131. The Hauges reallege and incorporate by reference the allegations contained in paragraphs 1–130 as if fully set forth herein.

132. The lease constitutes a valid contract and a legally binding obligation on ESR.

133. The Hauges have and continue to adhere to all material terms of the lease and all community rules and regulations. ESR's issuance of the Notice was, therefore, a material breach of Section 32(B) of the lease, which requires that a tenant "commit a material noncompliance" before such a notice can be issued. The Notice alleges only that the Hauges engaged "in conduct which has caused, and continues to cause, serious and substantial disturbances with other residents of the Community," and improperly conducted a business within The Evergreens. In fact, as ESR knew or should have known, these allegations were untrue and the result of other residents' religious animus.

134. The foregoing actions also breached ESR's duty of good faith and fair dealing implied in the lease under Virginia law. The lease afforded ESR the discretion to determine whether a tenant's actions in fact constituted material noncompliance. But ESR willfully ignored the Hauges' and other Bible Study participants' complaints and concerns about religious harassment occurring at The Evergreens. ESR instead intentionally relied on allegations that were religiously discriminatory on their face, and which it knew or should have known were false, as a pretext to find the Hauges in material noncompliance with the lease. ESR's actions were dishonest, in bad faith, and an arbitrary exercise of its discretion under the lease. Thus, ESR violated its implied duty of good faith and fair dealing under the lease.

135. ESR further breached the lease by imposing the Policy on the Hauges prohibiting the use of the Community Room for “religious services” or “religious purposes.” Section II of the Addendum to the lease grants the Hauges the “privilege” and “license” to use “all common areas,” including the Community Room, subject to limited exceptions. This privilege and license may only be changed for a “lawful reason.” ESR’s modification of the Hauges’ privilege and license to prevent their using the Community Room for any “religious services” or for any “religious purposes” is an unlawful discriminatory housing practice “because of . . . religion” under the FHA and VFHL, for the reasons set forth in Counts I–VI of this Complaint.

136. The foregoing actions also breached ESR’s duty of good faith and fair dealing implied in the lease under Virginia law. The addendum described use of the Community Room as “a privilege and license granted by” ESR, and stated that “such permission may be revoked by [ESR] at any time for any lawful reason.” But ESR willfully ignored the Hauges’ and other Bible Study participants’ complaints and concerns about religious harassment occurring at The Evergreens. ESR instead intentionally relied on allegations that were religiously discriminatory on their face, and which it knew or should have known were false, as a pretext to modify the Hauges’ privilege and license to use the Community Room. ESR’s actions were dishonest, in bad faith, and an arbitrary exercise of its discretion under the lease. Thus, ESR violated its implied duty of good faith and fair dealing under the lease.

137. As a result of these breaches, the Hauges have suffered economic injury. They have been denied the full use and enjoyment of their apartment and Community Room, among other amenities of The Evergreens, to which their monthly rent entitles them. The Hauges have been deprived of the benefit of their bargain under their lease since the date of the Notice and Policy. ESR has continued to charge the Hauges the same monthly rent, despite this reduction in value.

**Prayer for Relief**

**WHEREFORE**, the Hauges pray for judgment against Defendants as follows:

- A. That the Court issue a permanent injunction preventing Defendants from engaging in further violations of the Fair Housing Act and the Virginia Fair Housing Law;
- B. That the Court order Defendants to rescind the Notice and remove it from the Hauges' tenant file;
- C. That the Court order Defendants to modify the Policy to remove the prohibition on its use for "religious services" or "religious purposes," and allow use of the Community Room for purposes of holding the Bible Study going forward;
- D. That the Court order the Defendants to cease all forms of religious discrimination against the Hauges in their use of their private apartment and related amenities, including the Community Room, and take reasonable steps to investigate and prevent other residents interference in the Hauges' religious practices;
- E. That the Court order Defendants to give the Hauges the opportunity to sign a new lease on terms similar to their original lease, devoid of any clauses that discriminate against them because of religion;
- F. That the Court award compensatory damages to the Hauges and against Defendants, jointly and severally, in such amounts as the Court finds fair and reasonably supported by the evidence;
- G. That the Court order Defendants to pay the cost of this action, including reasonable attorney's fees and expenses; and
- H. That the Court grant such other determinations and/or relief the Court deems just and proper.

Dated: May 21, 2019

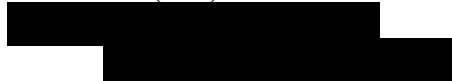
Respectfully submitted,

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Liv Hauge

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